



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

FOR THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

R0,80 Prys • Price
R0,08 Plus 10% BTW • VAT
R0,88 Verkoopprys • Selling price
Buitelands **R1,10** Other countries
Posvry • Post free

VOL. 322

KAAPSTAD, 15 APRIL 1992

CAPE TOWN, 15 APRIL 1992

No. 13920

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1071.

15 April 1992

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

No. 43 van 1992: Wysigingswet tot Wysiging van die Erfreg, 1992.

No. 1071.

15 April 1992

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

No. 43 of 1992: Law of Succession Amendment Act, 1992.

Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeninge aan.

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

Tot wysiging van die Algemene Regswysigingswet, 1952, ten einde 'n sekere bepaling te herroep; tot wysiging van die Wet op Testamente, 1953, ten einde sekere uitdrukkings te omskryf of nader te omskryf; die vormvereistes by die verlyding van testamente verder te reël; voorsiening te maak vir gevalle waar nie aan sodanige vormvereistes voldoen is nie; bevoegdheid aan 'n hof te verleen om 'n testament herroepe te verklaar; die uitwerking van 'n egskeiding of die nietigverklaring van 'n huwelik op 'n testament te reël; voorsiening te maak vir die vestiging van sekere voordele uit die erflater se testament in die oorlewende gade of die afstammeling van sekere persone; voorsiening te maak vir die uitleg van testamente in sekere gevalle; die voorsiening vir 'n soldate-testament te herroep; die bevoegdheid van sekere persone om 'n voordeel kragtens 'n testament te ontvang of om as eksekuteur benoem te word, verder te reël; die toepassing van die Wet op Suidwes-Afrika te herroep; en vir die vorm waarin sekere sertifikate opgestel kan word, voorsiening te maak; tot wysiging van die Boedelwet, 1965, ten einde sekere bevoegdhede en werksaamhede van die Meester met betrekking tot testamente verder te reël; tot wysiging van die Wet op Intestate Erfopvolging, 1987, ten einde voorsiening te maak vir die vestiging van sekere voordele uit 'n intestate boedel in die oorlewende gade of die afstammeling van sekere persone; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 7 April 1992.)

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

Herroeping van artikel 24 van Wet 32 van 1952

1. Artikel 24 van die Algemene Regswysigingswet, 1952, word hierby herroep.

Wysiging van artikel 1 van Wet 7 van 1953

2. Artikel 1 van die Wet op Testamente, 1953 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur na die omskrywing van “Hof” die volgende omskrywing in te voeg:
“‘interne reg’ die reg van ’n staat of gebied, uitgesonderd die reëls van die internasionale privaatreë van daardie staat of gebied;”; 10
- (b) deur die omskrywing van “Meester” deur die volgende omskrywing te vervang:
“‘Meester’ ’n Meester, Adjunk-meester of Assistent-meester van die Hooggeregshof [van Suid-Afrika, die Assistent-meester te Kimberley of die Meester van die Hoë Hof van Suidwes-Afrika] kragtens artikel 2 van die Boedelwet, 1965 (Wet No. 66 van 1965), aangestel.”; 15

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the General Law Amendment Act, 1952, so as to repeal a certain provision; to amend the Wills Act, 1953, so as to define or more closely define certain expressions; to further regulate the formalities in the execution of wills; to provide for cases where such formalities are not complied with; to grant a court the power to declare a will to be revoked; to regulate the effect of a divorce or the annulment of a marriage on a will; to provide for the vesting of certain benefits from the testator's will in the surviving spouse or the descendants of certain persons; to provide for the interpretation of wills in certain cases; to repeal the provision for a soldier's will; to further regulate the competency of certain persons to receive a benefit under a will or to be nominated as executor; to repeal the application of the Act to South West Africa; and to provide for the form in which certain certificates may be drawn up; to amend the Administration of Estates Act, 1965, so as to further regulate certain powers and functions of the Master in relation to wills; to amend the Intestate Succession Act, 1987, so as to provide for the vesting of certain benefits from an intestate estate in the surviving spouse or the descendants of certain persons; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 7 April 1992.)*

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

Repeal of section 24 of Act 32 of 1952

1. Section 24 of the General Law Amendment Act, 1952, is hereby repealed.

5 Amendment of section 1 of Act 7 of 1953

2. Section 1 of the Wills Act, 1953 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of "competent witness" of the following definition:

10 "'amendment' means a deletion, addition, alteration or interlin-
 ation;";

(b) by the insertion after the definition of "court" of the following definition:

15 "'deletion' means a deletion, cancellation or obliteration in
 whatever manner effected, excluding a deletion, cancellation or
 obliteration that contemplates the revocation of the entire will;";

- (c) deur die omskrywing van “onderteken” deur die volgende omskrywing te vervang:
 “‘onderteken’ ook die maak van ’n paraaf en, slegs in die geval van ’n erflater, ook die maak van ’n merk **[maar in die geval van ’n getuie, nie ook die maak van ’n merk nie]**, en het ‘handtekening’ ’n ooreenstemmende betekenis;”;
- (d) deur na die omskrywing van “onderteken” die volgende omskrywing in te voeg:
 “‘skrapping’ ’n skrapping, deurhaling of uitwissing op welke wyse ook al bewerkstellig, uitgesonderd ’n skrapping, deurhaling of uitwissing wat die herroeping van die hele testament beoog;”;
- (e) deur na die omskrywing van “testament” die volgende omskrywing in te voeg:
 “‘wysiging’ ’n skrapping, byvoeging, verandering of tussenskrif.”.

Wysiging van artikel 2 van Wet 7 van 1953

15

3. Artikel 2 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 “Behoudens die bepalinge van **[artikels drie en] artikel 3bis—**”;
- (b) deur subparagraaf (iv) van paragraaf (a) van subartikel (1) deur die volgende subparagraaf te vervang:
 “(iv) indien die testament meer dan een bladsy beslaan, elke ander bladsy as die bladsy waarop dit eindig, ook aldus deur die erflater of deur bedoelde ander persoon **[en deur bedoelde getuies]** onderteken word op enige plek op die bladsy; en”;
- (c) deur subparagraaf (v) van paragraaf (a) van subartikel (1) deur die volgende subparagraaf te vervang:
 “(v) indien die testament deur die erflater deur die maak van ’n merk of deur iemand anders in teenwoordigheid en in opdrag van die erflater onderteken word, ’n **[magistraat, vrederegter]** kommissaris van ede **[of notaris aan die end daarvan]** sertifiseer dat hy homself oortuig het van die identiteit van die erflater en dat die aldus ondertekende testament die testament van die erflater is, en **[indien die testament meer dan een bladsy beslaan, elke ander bladsy as die bladsy waarop dit eindig] elke bladsy van die testament, uitgesonderd die bladsy waarop sy sertifikaat voorkom, ook deur die [magistraat, vrederegter] kommissaris van ede [of notaris] wat aldus sertifiseer, onderteken word op enige plek op die bladsy: Met dien verstande dat—**
- (aa) die testament in die teenwoordigheid van die kommissaris van ede ingevolge subparagrafe (i), (iii) en (iv) onderteken word en die betrokke sertifikaat so gou doenlik nadat die testament aldus onderteken is, aangebring word; en
- (bb) indien die erflater sterf nadat die testament ingevolge subparagrafe (i), (iii) en (iv) onderteken is maar voordat die kommissaris van ede die betrokke sertifikaat aangebring het, die kommissaris van ede so gou doenlik hierna sy sertifikaat aanbring of voltooi, en elke bladsy van die testament, uitgesonderd die bladsy waarop sy sertifikaat voorkom, onderteken;”;
- (d) deur in paragraaf (b) van subartikel (1) die uitdrukking “skrapping, byvoeging, verandering of tussenskrif”, waar dit ook al voorkom, deur die uitdrukking “wysiging” te vervang;
- (e) deur subparagraaf (iv) van paragraaf (b) van subartikel (1) deur die volgende subparagraaf te vervang:
 “(iv) indien die **[skrapping, byvoeging, verandering of tussenskrif] wysiging** deur die merk van die erflater of die handtekening van iemand anders in sy teenwoordigheid en in opdrag van hom

- (c) by the insertion after the definition of "deletion" of the following definition:

" 'internal law' means the law of a state or territory, excluding the rules of the international private law of that state or territory;";

- 5 (d) by the substitution for the definition of "Master" of the following definition:

" 'Master' means a Master, Deputy Master or Assistant Master of the Supreme Court **[of South Africa, the Assistant Master at Kimberley or the Master of the High Court of South-West Africa]** appointed under section 2 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);"; and

- 10 (e) by the substitution for the definition of "sign" of the following definition:

15 " 'sign' includes the making of initials and, only in the case of a testator, the making of a mark **[but does not include the making of a mark in the case of a witness]**, and 'signature' has a corresponding meaning;".

Amendment of section 2 of Act 7 of 1953

3. Section 2 of the principal Act is hereby amended—

- 20 (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"Subject to the provisions of **[sections three and] section 3bis—**";

- (b) by the substitution for subparagraph (iv) of paragraph (a) of subsection (1) of the following subparagraph:

25 "(iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person **[and by such witnesses]** anywhere on the page; and";

- 30 (c) by the substitution for subparagraph (v) of paragraph (a) of subsection (1) of the following subparagraph:

35 "(v) if the will is signed by the testator by the making of a mark or by some other person in the presence and by the direction of the testator, a **[magistrate, justice of the peace]** commissioner of oaths **[or notary public]** certifies **[at the end thereof]** that he has satisfied himself as to the identity of the testator and that the will so signed is the will of the testator, and **[if the will consists of more than one page, each page other than the page on which it ends]** each page of the will, excluding the page on which his certificate appears, is also signed, anywhere on the page, by the **[magistrate, justice of the peace]** commissioner of oaths **[or notary public]** who so certifies: Provided that—

40 (aa) the will is signed in the presence of the commissioner of oaths in terms of subparagraphs (i), (iii) and (iv) and the certificate concerned is made as soon as possible after the will has been so signed; and

45 (bb) if the testator dies after the will has been signed in terms of subparagraphs (i), (iii) and (iv) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate, and sign each page of the will, excluding the page on which his certificate appears;";

- 50 (d) by the substitution in paragraph (b) of subsection (1) for the expression "deletion, addition, alteration or interlineation", wherever it occurs, of the expression "amendment";

- 55 (e) by the substitution for subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph:

60 "(iv) if the **[deletion, addition, alteration or interlineation]** amendment is identified by the mark of the testator or the signature of some other person made in his presence and by his

aangebring, bevestig word, 'n **[magistraat, vrederegtter]** kommissaris van ede **[of notaris]** op die testament sertifiseer dat hy homself oortuig het van die identiteit van die erflater en dat die **[skrapping, byvoeging, verandering of tussenskrif]** wysiging deur of op versoek van die erflater aangebring is: Met dien verstande dat— 5

(aa) die wysiging in die teenwoordigheid van die kommissaris van ede ingevolge subparagrafe (i) en (iii) bevestig word en die betrokke sertifikaat so gou doenlik nadat die wysiging aldus bevestig is, aangebring word; en 10

(bb) indien die erflater sterf nadat die wysiging ingevolge subparagrafe (i) en (iii) bevestig is maar voordat die kommissaris van ede die betrokke sertifikaat aangebring het, die kommissaris van ede so gou doenlik hierna sy sertifikaat aanbring of voltooi.”; 15

(f) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) 'n **[Skrapping, byvoeging, verandering of tussenskrif]** Wysiging wat in 'n na bedoelde datum verlyde testament aangebring word, word, by die toepassing van subartikel (1), vermoed, tensy die teendeel bewys word, aangebring te gewees het nadat die testament verly was.”; en 20

(g) deur die volgende subartikels by te voeg:

“(3) Indien 'n hof oortuig is dat 'n dokument of die wysiging van 'n dokument wat opgestel of verly is deur 'n persoon wat sedert die opstel of verlyding daarvan oorlede is, bedoel was om sy testament of 'n wysiging van sy testament te wees, gelas die hof die Meester om daardie dokument, of die dokument soos gewysig, vir die doeleindes van die Boedelwet, 1965 (Wet No. 66 van 1965), as testament te aanvaar ofskoon dit nie aan al die vormvereistes vir die verlyding of wysiging van testamente bedoel in subartikel (1) voldoen nie. 25 30

(4) Die sertifikaat van 'n kommissaris van ede bedoel in subartikel (1)(a)(v) of (b)(iv) kan in die vorm uiteengesit in Bylae 1 of 2 wees, na gelang van die geval.”.

Invoeging van artikels 2A, 2B, 2C en 2D in Wet 7 van 1953 35

4. Die volgende artikels word hierby in die Hoofwet na artikel 2 ingevoeg:

“Bevoegdheid van hof om testament herroepe te verklaar

2A. Indien 'n hof oortuig is dat 'n erflater—

(a) 'n geskrewe aanduiding op sy testament aangebring het of voor sy dood sodanige aanduiding laat aanbring het; 40

(b) 'n ander handeling met betrekking tot sy testament verrig het of voor sy dood sodanige handeling laat verrig het wat uit die voorkoms van die testament waarneembaar is; of

(c) 'n ander dokument opgestel of voor sy dood sodanige dokument laat opstel het, 45

waardeur hy bedoel het om sy testament of 'n gedeelte van sy testament te herroep, verklaar die hof die testament of die betrokke gedeelte, na gelang van die geval, herroepe te wees.

Uitwerking van egskending of nietigverklaring van huwelik op testament 50

2B. Indien iemand te sterwe kom binne drie maande nadat sy huwelik deur 'n egskending of nietigverklaring deur 'n bevoegde hof ontbind is en daardie persoon voor die datum van sodanige ontbinding 'n testament verly het, word uitvoering aan daardie testament gegee op dieselfde wyse waarop daaraan uitvoering gegee sou word indien sy voormalige gade voor die datum van die betrokke ontbinding oorlede 55

direction, a **[magistrate, justice of the peace]** commissioner of oaths **[or notary public]** certifies on the will that he has satisfied himself as to the identity of the testator and that the **[deletion, addition, alteration or interlineation]** amendment has been made by or at the request of the testator: Provided that—

(aa) the amendment is identified in the presence of the commissioner of oaths in terms of subparagraphs (i) and (iii) and the certificate concerned is made as soon as possible after the amendment has been so identified; and

(bb) if the testator dies after the amendment has been identified in terms of subparagraphs (i) and (iii) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate.”;

(f) by the substitution for subsection (2) of the following subsection:

“(2) Any **[deletion, addition, alteration or interlineation]** amendment made in a will executed after the said date shall for the purposes of subsection (1) be presumed, unless the contrary is proved, to have been made after the will was executed.”; and

(g) by the addition of the following subsections:

“(3) If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act No. 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1).

(4) The certificate of a commissioner of oaths referred to in subsection (1)(a)(v) or (b)(iv) may be in the form set out in Schedule 1 or 2, as the case may be.”.

35 Insertion of sections 2A, 2B, 2C and 2D in Act 7 of 1953

4. The following sections are hereby inserted in the principal Act after section 2:

“Power of court to declare a will to be revoked

2A. If a court is satisfied that a testator has—

(a) made a written indication on his will or before his death caused such indication to be made;

(b) performed any other act with regard to his will or before his death caused such act to be performed which is apparent from the face of the will; or

(c) drafted another document or before his death caused such document to be drafted,

by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked.

Effect of divorce or annulment of marriage on will

2B. If any person dies within three months after his marriage was dissolved by a divorce or annulment by a competent court and that person executed a will before the date of such dissolution, that will shall be implemented in the same manner as it would have been implemented if his previous spouse had died before the date of the dissolution concerned, unless it appears from the will that the

is, tensy uit die testament blyk dat die erflater ondanks die ontbinding |
van sy huwelik bedoel het om sy voormalige gade te bevoordeel.

Oorlewende gade en afstammeling van sekere persone geregtig op voordele ingevolge testament

2C. (1) Indien 'n afstammeling van 'n erflater, uitgesonderd 'n 5
minderjarige of 'n geestesongestelde afstammeling, wat saam met die
oorlewende gade van die erflater op 'n voordeel ingevolge 'n
testament geregtig is, afstand doen van sy reg om so 'n voordeel te
ontvang, vestig sodanige voordeel in die oorlewende gade.

(2) Indien 'n afstammeling van die erflater ingevolge die bepalings 10
van 'n testament, hetsy as 'n lid van 'n klas of andersins, ten tyde van
die dood van die erflater op 'n voordeel geregtig sou gewees het indien
hy geleef het, of nie onbevoeg was om te erf nie, of nie na die erflater
se dood afstand gedoen het van sy reg om so 'n voordeel te ontvang
nie, dan is die afstammeling van daardie afstammeling, behoudens 15
die bepalings van subartikel (1), staaksgewyse geregtig op die
voordeel, tensy uit die samehang van die testament anders blyk.

Uitleg van testamente

2D. (1) By die uitleg van 'n testament, tensy uit die samehang
anders blyk— 20

- (a) word 'n aangenome kind beskou as gebore uit sy aannemende 20
ouer of ouers en, by die bepaling van sy verwantskap met die
erflater of 'n ander persoon vir die doeleindes van 'n testament,
as die kind van sy aannemende ouer of ouers en nie as die kind van
sy natuurlike ouer of ouers of enige vorige aannemende ouer of 25
ouers nie, behalwe in die geval van 'n natuurlike ouer wat ook die
aannemende ouer van die betrokke kind is of tydens die
aanneming met die aannemende ouer van die betrokke kind
getroud was;
- (b) word die feit dat 'n persoon buite-egtelik gebore is buite rekening 30
gelaat by die bepaling van sy verwantskap met die erflater of 'n
ander persoon vir die doeleindes van 'n testament;
- (c) vestig 'n voordeel wat toegeken is aan die kinders van 'n persoon,
of die lede van 'n klas van persone, in die testament genoem, in 35
die kinders van daardie persoon of daardie lede van die klas van
persone wat op die tydstip van die oorgang van die voordeel leef,
of wat op daardie tydstip reeds verwek is en later lewend gebore
word.

(2) By die toepassing van hierdie artikel beteken 'testament' enige 40
geskrif van 'n persoon waarvolgens hy na sy dood oor sy goed of 'n deel
daarvan beskik.”.

Herroeping van artikel 3 van Wet 7 van 1953

5. Artikel 3 van die Hoofwet word hierby herroep.

Wysiging van artikel 3bis van Wet 7 van 1953, soos ingevoeg deur artikel 2 van Wet 41 van 1965 45

6. Artikel 3bis van die Hoofwet word hierby gewysig deur die uitdrukking
“reg”, waar dit ook al voorkom, deur die uitdrukking “interne reg” te vervang.

Invoeging van artikel 4A in Wet 7 van 1953

7. Die volgende artikel word hierby in die Hoofwet na artikel 4 ingevoeg:

“Bevoegdheid van persone wat by verlyding van testament betrokke is 50

4A. (1) Iemand wat 'n testament as 'n getuie attesteer en
onderteken, of wat 'n testament in die teenwoordigheid en in opdrag |

testator intended to benefit his previous spouse notwithstanding the dissolution of his marriage.

Surviving spouse and descendants of certain persons entitled to benefits in terms of will

5 **2C.** (1) If any descendant of a testator, excluding a minor or a mentally ill descendant, who, together with the surviving spouse of the testator, is entitled to a benefit in terms of a will renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse.

10 (2) If a descendant of the testator, whether as a member of a class or otherwise, would have been entitled to a benefit in terms of the provisions of a will if he had been alive at the time of death of the testator, or had not been disqualified from inheriting, or had not after the testator's death renounced his right to receive such a benefit, the descendants of that descendant shall, subject to the provisions of subsection (1), *per stirpes* be entitled to the benefit, unless the context of the will otherwise indicates.

Interpretation of wills

20 **2D.** (1) In the interpretation of a will, unless the context otherwise indicates—

- (a) an adopted child shall be regarded as being born from his adoptive parent or parents and, in determining his relationship to the testator or another person for the purposes of a will, as the child of his adoptive parent or parents and not as the child of his natural parent or parents or any previous adoptive parent or parents, except in the case of a natural parent who is also the adoptive parent of the child concerned or who was married to the adoptive parent of the child concerned at the time of the adoption;
- 25 (b) the fact that any person was born out of wedlock shall be ignored in determining his relationship to the testator or another person for the purposes of a will;
- 30 (c) any benefit allocated to the children of a person, or to the members of a class of persons, mentioned in the will shall vest in the children of that person or those members of the class of persons who are alive at the time of the devolution of the benefit, or who have already been conceived at that time and who are later born alive.

35 (2) In the application of this section 'will' means any writing by a person whereby he disposes of his property or any part thereof after his death."

Repeal of section 3 of Act 7 of 1953

5. Section 3 of the principal Act is hereby repealed.

Amendment of section 3bis of Act 7 of 1953, as inserted by section 2 of Act 41 of 1965

6. Section 3bis of the principal Act is hereby amended by the substitution for the expression "law", wherever it occurs, of the expression "internal law".

Insertion of section 4A in Act 7 of 1953

7. The following section is hereby inserted in the principal Act after section 4:

50 **"Competency of persons involved in execution of will**

4A. (1) Any person who attests and signs a will as a witness, or who signs a will in the presence and by direction of the testator, or who

van die erflater onderteken, of wat die testament of enige gedeelte daarvan in sy eie handskrif uitskryf, en die persoon wat tydens die verlyding van die testament die gade van sodanige persoon is, is onbevoeg om enige voordeel uit daardie testament te ontvang.

(2) Ondanks die bepalings van subartikel (1)—

(a) kan 'n hof 'n persoon of sy gade bedoel in subartikel (1) bevoeg verklaar om 'n voordeel uit 'n testament te ontvang indien die hof oortuig is dat daardie persoon of sy gade nie die erflater by die verlyding van die testament bedrieg of onbehoorlik beïnvloed het nie;

(b) is 'n persoon of sy gade wat ingevolge die reg insake intestate erfopvolging geregtig sou wees om van die erflater te erf indien daardie erflater intestaat gesterf het, nie aldus onbevoeg om 'n voordeel uit daardie testament te ontvang nie: Met dien verstande dat die waarde van die voordeel wat die betrokke persoon of sy gade ontvang, nie die waarde van die deel waarop daardie persoon of sy gade ingevolge die reg insake intestate erfopvolging geregtig sou wees, oorskry nie;

(c) is 'n persoon of sy gade wat 'n testament as 'n getuie geattesteer en onderteken het nie aldus onbevoeg om 'n voordeel uit daardie testament te ontvang nie indien die betrokke testament ook deur minstens twee ander bevoegde getuies geattesteer en onderteken is wat geen voordeel uit die betrokke testament ontvang nie.

(3) Vir die doeleindes van subartikels (1), en (2)(a) en (c), word die benoeming in 'n testament van 'n persoon as eksekuteur, trustee of voog as 'n voordeel beskou wat deur sodanige persoon uit daardie testament ontvang word."

Herroeping van artikels 5 en 6 van Wet 7 van 1953

8. Artikels 5 en 6 van die Hoofwet word hierby herroep.

Vervanging van artikel 7 van Wet 7 van 1953

9. Artikel 7 van die Hoofwet word hierby deur die volgende artikel vervang:

"Herroeping van wette

7. Die in [die] Bylae 3 genoemde wette word hiermee herroep vir sover in die vierde kolom van die Bylae aangedui word: Met dien verstande dat die aldus herroepe wette ten opsigte van 'n testament wat voor die eerste dag van Januarie 1954 verly is, van toepassing bly."

Herroeping van artikel 8 van Wet 7 van 1953

10. Artikel 8 van die Hoofwet word hierby herroep.

Invoeging van Bylaes 1 en 2 in Wet 7 van 1953

11. Die volgende Bylaes word hierby in die Hoofwet ingevoeg, terwyl die bestaande Bylae Bylae 3 word:

writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person at the time of the execution of the will, shall be disqualified from receiving any benefit from that will.

5 (2) Notwithstanding the provisions of subsection (1)—

(a) a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will;

10 (b) a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession;

15 (c) a person or his spouse who attested and signed a will as a witness shall not be thus disqualified from receiving a benefit from that will if the will concerned has been attested and signed by at least two other competent witnesses who will not receive any benefit from the will concerned.

20 (3) For the purposes of subsections (1), and (2)(a) and (c), the nomination in a will of a person as executor, trustee or guardian shall be regarded as a benefit to be received by such person from that will.”

Repeal of sections 5 and 6 of Act 7 of 1953

8. Sections 5 and 6 of the principal Act are hereby repealed.

30 Substitution of section 7 of Act 7 of 1953

9. The following section is hereby substituted for section 7 of the principal Act:

“Repeal of laws

35 7. The laws specified in [the] Schedule 3 are hereby repealed to the extent set forth in the fourth column of the Schedule: Provided that the laws so repealed shall continue to apply in respect of any will executed before the first day of January, 1954.”

Repeal of section 8 of Act 7 of 1953

10. Section 8 of the principal Act is hereby repealed.

40 Insertion of Schedules 1 and 2 in Act 7 of 1953

11. The following Schedules are hereby inserted in the principal Act, the existing Schedule becoming Schedule 3:

“Bylae 1

Sertifikaat ingevolge artikel 2(1)(a)(v)

Ek, (volle naam).....

van (volledige adres)

5

in my hoedanigheid as kommissaris van ede sertifiseer dat ek my vergewis het van
die identiteit van die erflater (volle naam)

en dat bygaande testament die testament van die erflater is.

10

.....
Handtekening
Kommissaris van ede.....
Hoedanigheid

15

.....
Plek.....
Datum**Bylae 2**

Sertifikaat ingevolge artikel 2(1)(b)(iv)

Ek, (volle naam).....

van (volledige adres)

20

in my hoedanigheid as kommissaris van ede sertifiseer dat ek my vergewis het van
die identiteit van die erflater (volle naam)en dat die wysiging(s) in hierdie testament deur/op die versoek van die erflater
aangebring is.

25

.....
Handtekening
Kommissaris van ede.....
Hoedanigheid

30

.....
Plek.....
Datum”.**Wysiging van artikel 8 van Wet 66 van 1965****12.** Artikel 8 van die Boedelwet, 1965, word hierby gewysig deur die volgende
subartikels na subartikel (4) in te voeg:

35

“Schedule 1

Certificate in terms of section 2(1)(a)(v)

I, (full name)

of (full address)

5

in my capacity as commissioner of oaths certify that I have satisfied myself as to
the identity of the testator (full name)

.....

and that the accompanying will is the will of the testator.

10

.....
Signature
Commissioner of Oaths.....
Capacity

15

Place

.....
Date**Schedule 2**

Certificate in terms of section 2(1)(b)(iv)

I, (full names)

20 of (full address)

.....

in my capacity as commissioner of oaths certify that I have satisfied myself as to
the identity of the testator (full name)

.....

25 and that the alteration(s) to this will was/were made by/at the request of the
testator......
Signature
Commissioner of Oaths

30

.....
Capacity.....
Place.....
Date”.**Amendment of section 8 of Act 66 of 1965**35 **12.** Section 8 of the Administration of Estates Act, 1965, is hereby amended
by the insertion after subsection (4) of the following subsections:

“(4A) By die neem van ’n besluit aangaande die aanvaarding van ’n testament vir die doeleindes van hierdie Wet neem die Meester die herroeping van ’n testament deur ’n latere testament in ag, maar nie die gemeenregtelike vermoedens aangaande die herroeping van ’n testament nie.

5

(4B) Die Meester kan vir die doeleindes van hierdie Wet ook ’n duplikaat van die oorspronklike testament aanvaar.”.

Wysiging van artikel 54 van Wet 66 van 1965, soos gewysig deur artikel 16 van Wet 86 van 1983

13. Artikel 54 van die Boedelwet, 1965, word hierby gewysig deur subparagraaf (i) van paragraaf (b) van subartikel (1) deur die volgende subparagraaf te vervang:

10

“(i) indien hy by testament benoem is en daardie testament nietig verklaar is deur die Hof of herroep is, hetsy geheel en al of vir sover dit op sy benoeming betrekking het, of indien hy by testament benoem is en die Meester van oordeel is dat die testament om die een of ander rede ongeldig is; of”.

15

Wysiging van artikel 1 van Wet 81 van 1987

14. Artikel 1 van die Wet op Intestate Erfopvolging, 1987, word hierby gewysig—

(a) deur paragraaf (c) van subartikel (4) te skrap; en

20

(b) deur die volgende subartikels by te voeg:

“(6) Indien ’n afstammeling van ’n oorledene, uitgesonderd ’n minderjarige of ’n geestesongestelde afstammeling, wat saam met die oorlewende gade van die oorledene op ’n voordeel uit ’n intestate boedel geregtig is, afstand doen van sy reg om so ’n voordeel te ontvang, vestig sodanige voordeel in die oorlewende gade.

25

(7) Indien ’n persoon onbevoeg is om ’n erfgenaam van die intestate boedel van die oorledene te wees, of afstand doen van sy reg om so ’n erfgenaam te wees, vererf enige voordeel wat hy sou ontvang het indien hy nie aldus onbevoeg was of aldus van sy reg afstand gedoen het nie, behoudens die bepalinge van subartikel (6), asof hy onmiddellik voor die dood van die erflater gesterf het en, indien van toepassing, asof hy nie aldus onbevoeg was nie.”.

30

Oorgangsbepaling

15. Die bepalinge van hierdie Wet is, behoudens die bepalinge van artikel 7 van die Wet op Testamente, 1953 (Wet No. 7 van 1953), nie van toepassing nie op ’n testament waarvan die erflater voor die inwerkingtreding van hierdie Wet oorlede is.

35

Kort titel en inwerkingtreding

16. Hierdie Wet heet die Wet tot Wysiging van die Erfreg, 1992, en tree in werking op ’n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

40

LAW OF SUCCESSION AMENDMENT ACT, 1992

Act No. 43, 1992

“(4A) In taking a decision concerning the acceptance of a will for the purposes of this Act, the Master shall take into account the revocation of a will by a later will, but not the common law presumptions concerning the revocation of a will.

5 (4B) The Master may for the purposes of this Act also accept a duplicate of the original will.”.

Amendment of section 54 of Act 66 of 1965, as amended by section 16 of Act 86 of 1983

10 13. Section 54 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

15 “(i) if he has been nominated by will and that will has been declared to be void by the Court or has been revoked, either wholly or in so far as it relates to his nomination, or if he has been nominated by will and the Master is of the opinion that the will is for any reason invalid; or”.

Amendment of section 1 of Act 81 of 1987

14. Section 1 of the Intestate Succession Act, 1987, is hereby amended—

20 (a) by the deletion of paragraph (c) of subsection (4); and
 (b) by the addition of the following subsections:

25 “(6) If a descendant of a deceased, excluding a minor or mentally ill descendant, who, together with the surviving spouse of the deceased, is entitled to a benefit from an intestate estate renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse.

30 (7) If a person is disqualified from being an heir of the intestate estate of the deceased, or renounces his right to be such an heir, any benefit which he would have received if he had not been so disqualified or had not so renounced his right shall, subject to the provisions of subsection (6), devolve as if he had died immediately before the death of the testator and, if applicable, as if he was not so disqualified.”.

Transitional clause

35 15. The provisions of this Act are, subject to the provisions of section 7 of the Wills Act, 1953 (Act No. 7 of 1953), not applicable to a will of which the testator died before the commencement of this Act.

Short title and commencement

40 16. This Act shall be called the Law of Succession Amendment Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

