

REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

Vol. 352

PRETORIA, 6 OCTOBER  
OKTOBER 1994

No. 15996

## GENERAL NOTICE

### NOTICE 1079 OF 1994

#### DEPARTMENT OF JUSTICE

#### MAGISTRATES' COURTS DRAFT AMENDMENT BILL

The above-mentioned Bill is hereby published for general information and comment. Comment should be addressed to The Director-General: Justice, Room 542, 120 Plain Street, Cape Town, 8000, and must reach the Director-General not later than 21 October 1994.

#### EXPLANATORY NOTE:

1. The Bill emanates from the South African Law Commission's interim report on imprisonment for debt and purports to abolish this practice altogether. The Commission's recommendation in this regard is in keeping with the Government's policy that imprisonment for debt is unacceptable in a modern democratic society. The Government is also of the view that the current practise in this regard is in conflict with the fundamental rights enshrined in Chapter 3 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

2. The Bill's primary objective is to repeal those provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) (the principal Act), in terms of which a judgment debtor may be committed to prison for contempt of court as a result of his or her failure to pay the judgment debt. Hence the repeal of sections 65F, 65G, 65H and 65L of the principal Act (in clauses 6, 7, 8 and 11 respectively). Clauses 3, 4, 5, 9 and 10 purports to effect certain consequential amendments to sections 65C, 65D, 65E, 65J and 65K respectively, of the principal Act, which emanate from the repeal of the provisions providing for the committal of a judgment debtor.

26664 — A

## ALGEMENE KENNISGEWING

### KENNISGEWING 1079 VAN 1994

#### DEPARTEMENT VAN JUSTISIE

#### KONSEPWYSIGINGSWETSONTWERP OP LANDDROSHOWE

Bovermelde Wetsontwerp word hiermee vir algemene inligting en kommentaar gepubliseer. Kommentaar moet gerig word aan die Direkteur-generaal: Justisie, Kamer 542, Pleinstraat 120, Kaapstad, 8000, en moet die Direkteur-generaal nie later nie as 21 Oktober 1994 bereik.

#### VERDUIDELIKENDE NOTA:

1. Die Wetsontwerp spruit voort uit die Suid-Afrikaanse Regskommissie se tussentydse verslag oor gevangesetting ten opsigte van skuld en beoog om dié praktyk in die geheel af te skaf. Die Kommissie se aanbeveling in die verband is in ooreenstemming met die Regering se beleid dat gevangesetting ten opsigte van skuld onaanvaarbaar is in 'n moderne demokratiese gemeenskap. Die Regering is voorts van mening dat die huidige praktyk in die verband teenstrydig is met die fundamentele regte wat in Hoofstuk 3 van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), verskans is.

2. Die belangrikste oogmerk van die Wetsontwerp is om die betrokke bepalings van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944) (die Hoofwet), ingevolge waarvan 'n vonnisskuldenaar weens minagting van die hof ter gevangesetting verwys kan word indien hy of sy versuim om die vonnisskuld te betaal, te herroep. Vandaar die herroeping van artikels 65F, 65G, 65H en 65L van die Hoofwet (in klousules 6, 7, 8 en 11 onderskeidelik). Klousules 3, 4, 5, 9 en 10 beoog die aanbring van sekere gevolglike wysigings aan onderskeidelik artikels 65C, 65D, 65E, 65J en 65K van die Hoofwet, wat voortspruit uit die herroeping van die bepalings wat vir gevangesetting van 'n vonnisskuldenaar voorsiening maak.

15996 — 1

3. The procedure in terms of which a debtor may be brought before a court for purposes of inquiry into his or her ability to pay a judgment debt is, however, retained. Clause 2 (a) purports to amend section 65A (1) of the principal Act in such manner that the purpose of a notice issued in terms of section 65A (1) would be to enable the court to inquire into the financial position of the judgment debtor and to make an order as the court deems just and equitable. In terms of the proposed new subsection (7) (see clause 2 (d)) failure to adhere to a notice issued under section 65A (1) shall be an offence punishable in terms of section 106 of the principal Act. As a result hereof clause 12 purports to effect certain consequential amendments to section 106.

4. The Commission is further of the opinion that the proposed criminal sanction (section 106) will not ensure that a debtor is brought before a court for purposes of inquiry into his or her ability to pay a judgment debt. Hence the proposed new subsection (6) of section 65A (see clause 2(d)) which makes provision for a person who fails to appear in court after having received a notice in terms of subsection (1), to be arrested and brought before the court at the earliest possible opportunity.

5. The Commission deems it appropriate to expressly empower the court to make an order for the payment of a judgment debt in specified instalments or otherwise. The amendment of section 48 of the principal Act, as proposed by clause 1, purports to give effect to this recommendation.

6. In terms of section 109 (1) of the principal Act, any person against whom judgment has been given or an order has been made in a civil case, and who changes his or her address before such judgment or order has been satisfied in full, is obliged to notify in writing the clerk of the court concerned of such change within 14 days thereof. Failure to comply with this provision may result in such debtor's committal to prison for a period of 30 days or to periodical imprisonment for a period not exceeding 720 hours. (See section 109 (4)). Section 109 applies to *any* judgment or *any* order of a court which has not been satisfied in full. A consequential amendment of subsection (2) is therefor required, excluding from its provisions any judgment for the payment of a sum of money or any order for the payment in instalments or otherwise of such an amount as contemplated by section 65A (1) and in accordance with the proposed amendment of section 106. Clause 13 purports to effect such consequential amendment.

7. The effect of the proposed amendment of section 109 (2) will be that all judgments for the payment of sums of money or orders for the payment in instalments or otherwise of such amounts will remain subject only to subsection (1) of section 109, which requires the debtor to notify the clerk of the court of

3. Die prosedure waarkragtens 'n skuldenaar voor 'n hof gebring kan word ten einde ondersoek in te stel na sy of haar vermoë om 'n vonnisskuld te betaal, word egter behou. Klousule 2 (a) beoog om artikel 65A (1) sodanig te wysig dat die doel van 'n kennisgewing wat kragtens artikel 65A (1) uitgereik word, sal wees om die hof in staat te stel om ondersoek na die finansiële posisie van die vonnisskuldenaar in te stel en om 'n bevel te maak wat die hof regverdig en billik ag. Kragtens die voorgestelde nuwe subartikel (7) (kyk klousule 2 (d)) sal die versuim om gehoor te gee aan 'n kennisgewing kragtens artikel 65A (1) uitgereik, 'n misdryf daarstel wat ingevolge die bepalings van artikel 106 van die Hoofwet strafbaar is. Uit hoofde hiervan beoog klousule 12 om sekere gevolglike wysigings aan artikel 106 aan te bring.

4. Die Kommissie is voorts van mening dat die voorgestelde strafsanksie (artikel 106) nie sal verseker dat 'n skuldenaar voor 'n hof gebring sal word vir doeleindes van 'n ondersoek na sy of haar vermoë om 'n vonnisskuld te betaal nie. Om dié rede word in die voorgestelde nuwe subartikel (6) van artikel 65A (kyk klousule 2 (d)) voorsiening gemaak dat 'n persoon wat versuim om in die hof te verskyn nadat hy of sy 'n kennisgewing ingevolge subartikel (1) ontvang het, gearresteer en by die vroegste moontlike geleentheid voor die hof gebring kan word.

5. Die Kommissie beveel aan dat dit gepas is om die hof uitdruklik te magtig om die betaling van 'n vonnisskuld in paalemente of andersins, te beveel. Die wysiging van artikel 48 van die Hoofwet, wat in klousule 1 voorgestel word, beoog om aan dié aanbeveling gevolg te gee.

6. Kragtens artikel 109 (1) van die Hoofwet is enige persoon teen wie vonnis gegee of 'n bevel verleen is in 'n siviele saak, en wat sy of haar adres verander alvorens daar ten volle aan so 'n vonnis of bevel voldoen is, verplig om die klerk van die betrokke hof binne 14 dae na sodanige verandering skriftelik van die verandering in kennis te stel. Versuim om aan hierdie bepaling te voldoen, kan lei tot gevangensetting van so 'n skuldenaar vir 'n tydperk van tot 30 dae of tot periodieke gevangenisstraf van hoogstens 720 uur. (Kyk artikel 109 (4)). Artikel 109 is van toepassing op *enige* vonnis of *enige* bevel van 'n hof waaraan nie ten volle voldoen is nie. 'n Gevolglike wysiging van subartikel (2) is dus aangewese, ten einde 'n vonnis tot die betaling van 'n geldbedrag of 'n ander bevel tot die betaling in paalemente of andersins van so 'n bedrag, uit te sluit van die bepalings van artikel 109, om dan ooreenkomstig artikel 65A (1) en in ooreenstemming met die voorgestelde wysiging van artikel 106 gehanteer te word. Klousule 13 beoog om sodanige gevolglike wysiging aan te bring.

7. Die voorgestelde wysiging van artikel 109 (2) sal meebring dat alle vonnisse tot die betaling van geldbedrae of bevel tot die betaling in paalemente of andersins van sodanige bedrae, slegs aan die bepalings van subartikel (1) van artikel 109 onderhewig sal wees, wat vereis dat die skuldenaar die klerk

all changes of address. As a sanction for failure to comply with this requirement should nevertheless be provided, clause 14 purports to insert a new section 109A into the principal Act, providing for such sanction.

8. Section 3 of the Civil Imprisonment Act, 1977 (Act No. 2 of 1977), reads as follows:

**"Saving**

3. This Act shall not affect the power of a court of law to grant an order for the committal of any person for contempt of court or to sentence a judgment debtor to imprisonment in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), for failing to satisfy a judgment."

It is clear that this section must be repealed and clause 15 gives effect hereto.

9. Clause 16 gives effect to the Commission's recommendation that provision be made for a transitional clause governing the position of—

- (a) warrants of arrest and detention issued prior to the commencement of the proposed Act but not yet executed;
- (b) persons detained as a result of failure to comply with debt judgments or orders at the time of commencement of the proposed Act; and
- (c) legal proceedings instituted with a view to obtain the relief provided by the proposed Act, and which may be pending at the commencement of the Act.

Clause 16 also prohibits the institution of any claims for loss or damages that may arise as a result of the adoption of the proposed Act.

10. The Commission does not in its interim report make any recommendation as to alternative methods of effective debt recovery in the absence of civil imprisonment such as, for instance, greater attention to the full permissible excussion of debtors and the encouragement of effective competition among sheriffs. The Commission will deal more fully with this aspect in its final report on debt collecting.

REPUBLIC OF SOUTH AFRICA

**MAGISTRATES' COURTS AMENDMENT BILL**

(Draft)

(MINISTER OF JUSTICE)

van die hof van alle adresveranderings in kennis moet stel. Aangesien daar nietemin 'n sanksie aan die versuim om aan dié vereiste te voldoen, gekoppel behoort te word, beoog klousule 14 die invoeging van 'n nuwe artikel 109A in die Hoofwet, ten einde so 'n sanksie daar te stel.

8. Artikel 3 van die Wet op die Afskaffing van Siviele Gyseling, 1977 (Wet No. 2 van 1977), lui soos volg:

**"Voorbehoud**

3. Hierdie Wet raak nie die bevoegdheid van 'n hof om 'n bevel te verleen vir gevangesetting van 'n persoon weens minagting van die hof of om 'n vonnis skuldenaar ingevolge enige bepaling van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), te vonnis om gevangenisstraf te ondergaan weens sy versuim om aan 'n vonnis te voldoen nie."

Dit is duidelik dat hierdie artikel herroep behoort te word en klousule 15 gee gevolg hieraan.

9. Klousule 16 gee gevolg aan die Kommissie se aanbeveling dat voorsiening gemaak behoort te word vir oorgangsbepalings tot reëling van—

- (a) lasbriewe vir arres en gevangesetting wat voor inwerkingtreding van die voorgestelde Wet uitgereik is maar nog nie uitgevoer is nie;
- (b) persone wat aangehou word op die datum van inwerkingtreding van die voorgestelde Wet as gevolg van hul versuim om skuldvonnisse of -bevele na te kom; en
- (c) geregtelike verrigtinge wat ingestel is met die oog op die verligting wat deur die voorgestelde Wet in die vooruitsig gestel word, en wat by inwerkingtreding van die Wet nog hangend is.

Klousule 16 verbied ook die instel van enige eise vir verlies of skade wat uit hoofde van die aanneming van die voorgestelde Wet mag voortspruit.

10. Die Kommissie maak nie in sy tussentydse verslag enige aanbeveling met betrekking tot alternatiewe metodes vir doeltreffende skuldinvordering, in die afwesigheid van siviele gevangesetting, nie sops byvoorbeeld, meer aandag aan die maksimum toelaatbare uitwinning van skuldenaars en aanmoediging van doeltreffende mededinging tussen balju's. Die Kommissie sal die aangeleentheid meer volledig in sy finale verslag oor skuldinvordering hanteer.

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP  
LANDDROSHOWE**

(Konsep)

(MINISTER VAN JUSTISIE)

**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.

**BILL**

**To amend the Magistrates' Courts Act, 1944, so as to provide for the abolition of the committal of a person to imprisonment for failure to satisfy a judgment or order for the payment of a judgment debt and to provide for matters incidental thereto.**

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

**Amendment of section 48 of Act 32 of 1944 as amended by section 3 of Act 48 of 1965 and section 12 of Act 53 of 1970**

1. Section 48 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act), is hereby amended by the insertion after paragraph (e) of the following paragraph:

"(f) an order against a party for the payment of an amount of money for which judgment has been granted in specified instalments or otherwise, including an order contemplated by section 65J or 73."

**Amendment of section 65A of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976**

2. Section 65A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) If a court has given judgment for the payment of a sum of money or has ordered the payment in specified instalments or otherwise of such an amount, and such judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or on which such an amount became payable or from the expiry of the period of suspension ordered in terms of section 48(e), as the case may be, the judgment creditor may issue, from the court of the district in which the judgment debtor resides, carries on business or is employed, or if the judgment debtor is a juristic person, from the court of the district in which the registered office or main place of business of the juristic person is situate, a notice calling upon the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as representative of the juristic person and in his or her personal capacity, to appear before the court in chambers on a date specified in such

**ALGEMENE VERDUIDELIKENDE NOTA:**

- [ ] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordeninge aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

**WETSONTWERP**

**Tot wysiging van die Wet op Landdroshowe, 1944, ten einde voorsiening te maak vir die afskaffing van die gevangesetting van 'n persoon weens versuim om aan 'n vonnis of bevel vir die betaling van 'n vonnisskuld te voldoen en vir aangeleenthede wat daarmee in verband staan.**

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

**Wysiging van artikel 48 van Wet 32 van 1944 soos gewysig deur artikel 3 van Wet 48 van 1965 en artikel 12 van Wet 53 van 1970**

1. Artikel 48 van die Wet op Landdroshowe, 1944 (hieronder die Hoofwet genoem), word hierby gewysig deur die volgende paragraaf na paragraaf (e) in te voeg:

"(f) 'n bevel teen 'n party verleen vir die betaling van 'n bedrag geld waarvoor vonnis gevel is in bepaalde paaieimente of andersins, insluitende 'n bevel in artikels 65J en 73 beoog."

**Wysiging van artikel 65A van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976**

2. Artikel 65A van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Indien 'n hof 'n vonnis gevel het vir die betaling van 'n bedrag geld of die betaling in bepaalde paaieimente van so 'n bedrag beveel het, en so 'n vonnis of bevel onvoldaan gebly het vir 'n tydperk van 10 dae vanaf die datum waarop dit gevel is of waarop so 'n bedrag betaalbaar geword het of vanaf verstryking van die tydperk van opskorting kragtens artikel 48(e) beveel, na gelang van die geval, kan die vonnisskuldeiser uit die hof van die distrik waarin die vonnisskuldenaar woon, besigheid dryf of in diens is, of indien die vonnisskuldenaar 'n regspersoon is, uit die hof van die distrik waarin die geregistreerde kantoor of hoofbesigheidsplek van die regspersoon geleë is, 'n kennisgewing uitreik waarby die vonnisskuldenaar, of, indien die vonnisskuldenaar 'n regspersoon is, 'n direkteur of beampste van die regspersoon, as verteenwoordiger van die regspersoon en in sy of haar persoonlike hoedanigheid, aangesê word om op 'n datum in die kennisgewing ver-

notice **[to show cause why he should not be committed for contempt of court and why the judgment debtor should not be ordered to pay the judgment debt in instalments or otherwise]** in order to enable the court to inquire into the financial position of the judgment debtor and to make an order as the court deems just and equitable.”.

- (b) by the substitution for subsection (2) of the following subsection:

“(2) If the minutes of the proceedings do not show that the judgment debtor was present in person or represented by any person when judgment was given and if no warrant of execution pursuant to the judgment has been served on the judgment debtor personally, no notice under subsection (1) shall be issued unless the judgment creditor or his or her attorney provides proof to the satisfaction of the clerk of the court that he or she has advised the judgment debtor by registered letter of the terms of the judgment or of the expiry of the suspension ordered under section 48(e), as the case may be **[and of the consequences of his failure to satisfy the judgment]** and a period of 10 days has elapsed since the date on which the said letter was posted.”;

- (c) by the substitution for subsection (4) of the following subsection:

“(4) If the court has given judgment for the payment of an amount of money in instalments, no notice under subsection (1) shall be issued unless the judgment creditor has delivered an affidavit or affirmation or his or her attorney has delivered a certificate to the clerk of the court in which is mentioned the outstanding balance of the judgment debt, in what respects the judgment debtor has failed to comply with the court order, to what extent he or she is in arrear with the payment of the instalments and that the judgment debtor was advised by registered letter of the terms of the judgment **[and of the consequences of his failure to satisfy it]**.”; and

- (d) by the insertion after subsection (4) of the following subsections:

“(5) If a judgment debtor fails to satisfy an order to pay the judgment debt in instalments or otherwise, or if an emoluments attachment order has not been satisfied, a judgment creditor may issue anew a notice in accordance with subsection (1).”

meld voor die hof *in camera* **[om redes aan te voer waarom hy nie weens minagting van die hof ter gevangesetting verwys moet word nie en waarom die vonnisskuldenaar nie beveel moet word om die vonnisskuld en koste in paaieimente of andersins te betaal nie]** ten einde die hof in staat te stel om ondersoek in te stel na die finansiële toestand van die vonnisskuldenaar en om 'n bevel te maak wat die hof regverdig en billik ag.”;

- (b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Indien die notule van die verrigtinge nie aantoon dat die vonnisskuldenaar persoonlik of deur 'n verteenwoordiger aanwesig was toe die vonnis gevel is nie en indien geen lasbrief vir eksekusie ingevolge die vonnis aan die vonnisskuldenaar persoonlik beteken is nie, mag geen kennisgewing kragtens subartikel (1) uitgereik word nie tensy die vonnisskuldeiser of sy of haar prokureur bewys ten genoë van die klerk van die hof lewe dat hy of sy die vonnisskuldenaar per geregistreerde brief in kennis gestel het van die bepalings van die vonnis of van die verstryking van die tydperk van opskorting kragtens artikel 48(e) beveel, na gelang van die geval, **[en van die gevolge van sy versuim om aan die vonnis te voldoen]**, en 'n tydperk van 10 dae verstryk het vanaf die datum waarop bedoelde brief gepos is.”;

- (c) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Indien die hof 'n vonnis gevel het vir die betaling van 'n bedrag geld in paaieimente, mag geen kennisgewing kragtens subartikel (1) uitgereik word nie tensy die vonnisskuldeiser 'n beëdigde verklaring of 'n bevestiging of sy of haar prokureur 'n sertifikaat by die klerk van die hof ingedien het waarin vermeld word die uitstaande saldo van die vonnisskuld, in watter opsigte die vonnisskuldenaar versuim het om aan die hofbevel te voldoen, in watter mate hy of sy agterstallig is met die betaling van die paaieimente en dat die vonnisskuldenaar per geregistreerde brief in kennis gestel is van die bepalings van die vonnis **[en van die gevolge van sy versuim om daaraan te voldoen]**.”; en

- (d) deur die volgende subartikel na subartikel (4) in te voeg:

“(5) Indien 'n vonnisskuldenaar versuim om 'n bevel om die vonnisskuld in paaieimente of andersins te betaal, na te kom of indien 'n besoldigingsbeslagbevel nie nagekom is nie, kan 'n vonnisskuldeiser opnuut 'n kennisgewing ooreenkomstig subartikel (1) uitreik.”

(6) If it appears to a court that a notice in terms of subsection (1) to appear in court on a specified date has come to the notice of the judgment debtor, director or officer concerned and the person concerned has failed to appear on that date or on any subsequent date to which the proceedings may be postponed and of which it appears to the court that the person concerned has knowledge, the court may on the application of the judgment creditor issue a warrant directing the sheriff to arrest the said person and bring him or her before the court at the earliest possible opportunity in order to enable the court to carry out an enquiry contemplated in subsection (1).

(7) A notice referred to in subsection (1) shall be deemed to be an order of the court the wilful disobedience of or neglect to comply with which is an offence punishable in terms of section 106."

**Substitution of section 65C of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976**

3. The following section is hereby substituted for section 65C of the principal Act:

**"Joinder of proceedings**

**65C.** If, under section 65A (1), two or more notices have been served on any judgment debtor or director or officer to **[show cause]** appear on the same day as provided in that section, the proceedings in terms of such notices may be heard concurrently."

**Amendment of section 65D of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976**

4. Section 65D of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) On the appearance before the court of the judgment debtor or, if the judgment debtor is a juristic person, the director or officer of the juristic person or in his personal capacity, on the return day of the notice referred to in section 65A (1) or on any date to which the proceedings have been postponed, the court in chambers shall, subject to the provisions of subsection (2) of this section, call upon him to give evidence under oath or affirmation on his financial position or the financial position of the juristic person, as the case may be, and the court shall permit the examination or cross-examination of the judgment debtor or the said director or officer on all matters relevant to the judgment debtor's financial posi-

(6) Indien dit aan 'n hof blyk dat 'n kennisgewing ingevolge subartikel (1) om op 'n bepaalde datum in die hof te verskyn tot die kennis van die vonnissskuldenaar, direkteur of betrokke beampte gekom het en die betrokke persoon versuim het om op daardie datum of op enige daaropvolgende datum waarna die verrigtinge uitgestel mag wees, te verskyn en waarvan dit aan die hof blyk dat die betrokke persoon kennis dra, kan die hof op aansoek van die vonnissskuldeiser 'n lasbrief uitreik waarin die balju beveel word om die genoemde persoon te arresteer en hom of haar by die vroegste moontlike geleentheid voor die hof te bring ten einde die hof in staat te stel om 'n ondersoek in subartikel (1) beoog in te stel.

(7) 'n Kennisgewing waarna in subartikel (1) verwys word, word geag 'n bevel van die hof te wees ten opsigte waarvan die opsetlike verontagsaming daarvan of versuim om daar aan te voldoen 'n misdryf is wat ingevolge artikel 106 strafbaar is."

**Vervanging van artikel 65C van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976**

3. Artikel 65C van die Hoofwet word hierby deur die volgende artikel vervang:

**"Samevoeging van verrigtinge**

**65C.** Indien twee of meer kennisgewings kragtens artikel 65A (1) aan 'n vonnissskuldenaar of direkteur of beampte beteken is om op dieselfde dag **[redes aan te voer]** te verskyn soos in daardie artikel bepaal, kan die verrigtinge ingevolge daardie kennisgewings saam verhoor word."

**Wysiging van artikel 65D van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976**

4. Artikel 65D van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Wanneer die vonnissskuldenaar of, as die vonnissskuldenaar 'n regspersoon is, die direkteur of beampte van die regspersoon gedaag as verteenwoordiger van die regspersoon of in sy of haar persoonlike hoedanigheid, op die keurtag van die kennisgewing in artikel 65A (1) genoem of op 'n dag waarna die verrigtinge uitgestel is, voor die hof verskyn, roep die hof *in camera*, behoudens die bepalings van subartikel (2) van hierdie artikel, hom of haar op om getuienis onder eed of bevestiging af te lê aangaande sy of haar finansiële toestand of die finansiële toestand van die regspersoon, na gelang van die geval, en laat die hof die ondervraging of

tion and his or her ability to pay the judgment debt **[and his failure to do so]**, and the court shall receive such further evidence as may be adduced either orally or by affidavit or in such other manner as the court may deem just, by or on behalf of either the judgment debtor or the judgment creditor, as is material to the determination of the judgment debtor's financial position and his or her ability to pay the judgment debt **[and his failure so to do]**, and for the purposes of such evidence witnesses may be summoned in the manner prescribed in the rules.”;

- (b) by the substitution for the expression preceding paragraph (a) of subsection (4) of the following expression:

“In determining the ability of the judgment debtor to **[satisfy the judgment]** pay the judgment debt in instalments or otherwise the court shall take into consideration—”; and

- (c) by the substitution for subsection (5) of the following subsection:

“(5) In determining the ability of the judgment debtor to pay the judgment debt in instalments or otherwise the court may, in its discretion, refuse to take account of the periodical payments that a judgment debtor has undertaken to make in terms of a hire-purchase agreement for the purchase of goods which have not been exempted from seizure in terms of section 67 or which cannot, in the opinion of the court, be regarded as the judgment debtor's household requirements.”.

#### **Amendment of section 65E of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976**

5. Section 65E of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Upon an order referred to in subsection 1(c) of this section or section 57, 58 or 65 having been made and if the judgment debtor was not present or represented in court when the order was made, the judgment creditor or his attorney shall forthwith by registered letter advise the judgment debtor of the terms of the order **[and of the consequences of his failure to satisfy it]**.”.

#### **Repeal of section 65F of Act 32 of 1944**

6. Section 65F of the principal Act is hereby repealed.

kruisondervraging van die vonnisskuldenaar of genoemde direkteur of beampte toe oor alle aangeleenthede rakende die vonnisskuldenaar se finansiële toestand en sy of haar vermoë om die vonnisskuld en koste te betaal **[en sy versuim om dit te doen]** en ontvang die hof sodanige verdere getuienis, hetsy mondeling of by beëdigde verklaring, of op 'n ander wyse wat die hof billik ag, deur of ten behoeve van of die vonnisskuldenaar of die vonnisskuldeiser aangevoer wat ter sake is by die vasstelling van die vonnisskuldenaar se finansiële toestand en sy of haar vermoë om die vonnisskuld te betaal **[en sy versuim om dit te doen]**, en vir die doeleindes van sodanige getuienis kan getuies gedagvaar word op die in die reëls voorgeskrewe wyse.”;

- (b) deur die uitdrukking wat paragraaf (a) van subartikel (4) voorafgaan, deur die volgende uitdrukking te vervang:

“By die bepalings van die vermoë van 'n vonnisskuldenaar om **[aan die vonnis te voldoen]** die vonnisskuld in paaieimente of andersins te betaal, neem die hof in ag—”; en

- (c) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) By die bepaling van die vermoë van 'n vonnisskuldenaar om die vonnisskuld in paaieimente of andersins te betaal, kan die hof **[kan]** na goeddunke weier om periodieke betalings in ag te neem wat 'n vonnisskuldenaar onderneem het om te betaal ingevolge 'n huurkoop-ooreenkoms vir die aankoop van goed wat nie ingevolge artikel 67 van die beslaglegging vrygestel is nie of wat na die oordeel van die hof nie as huishoudelike benodigdhede van die vonnisskuldenaar beskou kan word nie.”.

#### **Wysiging van artikel 65E van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976**

5. Artikel 65E van die Hoofwet word hierby gewysig deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Nadat 'n in subartikel (1)(c) van hierdie artikel of artikel 57, 58 of 65 genoemde bevel uitgereik is en indien die vonnisskuldenaar nie in die hof teenwoordig of verteenwoordig was toe die bevel uitgereik is nie, stel die vonnisskuldeiser of sy of haar prokureur die vonnisskuldenaar onverwyld per geregistreerde brief in kennis van die bepalings van die bevel **[en van die gevolge van sy versuim om daaraan te voldoen]**.”.

#### **Herroeping van artikel 65F van Wet 32 van 1944**

6. Artikel 65F van die Hoofwet word hierby herroep.

**Repeal of section 65G of Act 32 of 1994**

7. Section 65G of the principal Act is hereby repealed.

**Repeal of section 65H of Act 32 of 1994**

8. Section 65H of the principal Act is hereby repealed.

**Amendment of section 65J of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976, and as amended by section 2 of Act 53 of 1983**

9. Section 65J of the principal Act is hereby amended—

- (a) by the deletion of paragraphs (a) and (c) of subsection (1);
- (b) by the deletion of subparagraph (ii) of paragraph (b) of subsection (2);
- (c) by the substitution for paragraph (a) of subsection (9) of the following paragraph:

“(a) Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of the garnishee before the judgment debt has been paid in full and becomes self-employed or is employed by someone else he or she shall, or shall pending the service of the emoluments attachment order on his or her new employer, again be obliged to comply with the relevant order referred to in subsection (1) [(a) or (b) and may, subject to the provisions of section 65G, be committed for contempt of court for failing to comply with the said order].”; and

- (d) by the deletion of paragraph (b) of subsection (9).

**Amendment of section 65K of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976**

10. Section 65K of the principal Act is hereby amended by the deletion of subsection (2).

**Repeal of section 65L of Act 32 of 1944**

11. Section 65L of the principal Act is hereby repealed.

**Substitution of section 106 of Act 32 of 1944 as substituted by section 8 of Act 63 of 1976 and by section 9 of Act 19 of 1985**

12. The following section is hereby substituted for section 106 of the principal Act:

**“Penalty for disobedience of order of court**

106. Any person wilfully disobeying or neglecting to comply with any judgment or order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or

**Herroeping van artikel 65G van Wet 32 van 1944**

7. Artikel 65G van die Hoofwet word hierby herroep.

**Herroeping van artikel 65H van Wet 32 van 1944**

8. Artikel 65H van die Hoofwet word hierby herroep.

**Wysiging van artikel 65J van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976, en soos gewysig deur artikel 2 van Wet 53 van 1983**

9. Artikel 65J van die Hoofwet word hierby gewysig—

- (a) deur paragrawe (a) en (c) van subartikel (1) te skrap;
- (b) deur subparagraaf (ii) van paragraaf (b) van subartikel (2) te skrap;
- (c) deur paragraaf (a) van subartikel (9) deur die volgende paragraaf te vervang:

“(a) Wanneer 'n vonnisskuldenaar op wie 'n besoldigingsbeslagbevel betrekking het, die diens van die beslagskuldenaar verlaat voordat die vonnisskuld ten volle vereffen is en vir homself of haarself begin werk of in diens van iemand anders tree, is hy of sy, of is hy of sy hangende die betekening van die besoldigingsbeslagbevel aan sy of haar nuwe werkgewer, weer verplig om te voldoen aan die toepaslike bevel in subartikel (1) [(a) of (b)] genoem, [en kan hy, behoudens die bepalinge van artikel 65G, ter gevangesetting verwys word weens minagting van die hof ten opsigte van sy versuim om aan daardie bevel te voldoen].”; en

- (d) deur paragraaf (b) van subartikel (9) te skrap.

**Wysiging van artikel 65K van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976**

10. Artikel 65K van die Hoofwet word hierby gewysig deur subartikel (2) te skrap.

**Herroeping van artikel 65L van Wet 32 van 1944**

11. Artikel 65L van die Hoofwet word hierby herroep.

**Vervanging van artikel 106 van Wet 32 van 1944, soos vervang deur artikel 8 van Wet 63 van 1976 en deur artikel 9 van Wet 19 van 1985**

12. Artikel 106 van die Hoofwet word hierby deur die volgende artikel vervang:

**“Straf op verontagsaming van bevel van die hof**

106. Iedereen wat hom of haar skuldig maak aan opsetlike verontagsaming van, of versuim om te voldoen aan, 'n vonnis of 'n bevel van 'n hof of 'n kennisgewing wat wettig op 'n dagvaarding vir

effects or with an oral notification by a court to appear on a specified date, shall be guilty of contempt of court and shall, upon conviction, be liable to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine: Provided that for the purposes of this section the word 'judgment' or the word 'order', as the case may be, shall not include a judgment or order referred to in section [65,] 65A (1), 65E, [65G], 65I, 65J, 65K, 72, 74 or 74J."

**Amendment of section 109 of Act 32 of 1944 as substituted by section 28 of Act 40 of 1952, amended by section 24 of Act 19 of 1963 and substituted by section 9 of Act 63 of 1976**

13. Section 109 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A judgment creditor or an administrator may, if the judgment debtor concerned fails to comply with the provisions of subsection (1) and if the judgment or order concerned is not a judgment or order mentioned in section 65A (1), issue a notice from the court of the district in which the judgment debtor resides, carries on business or is employed, calling upon the judgment debtor to appear before such court in chambers to adduce reasons why he or she should not be committed for such failure."

**Insertion of section 109A in Act 32 of 1944**

14. The following section is hereby inserted after section 109 of the principal Act:

**"Money debtor's failure to notify change of address"**

109A. Any judgment debtor against whom a court has given judgment or has made an order mentioned in section 65A (1) and who fails to comply with the provisions of section 109 (1), shall be guilty of an offence and liable upon conviction to a fine or in default of payment, to imprisonment for a period not exceeding 30 days."

**Repeal of section 3 of Act 2 of 1977**

15. Section 3 of the Abolition of Civil Imprisonment Act, 1977 (Act No. 2 of 1977), is hereby repealed.

**Transitional clause**

16. (1) A warrant for the arrest and detention of a judgment debtor issued before the commencement of this Act as a result of such judgment debtor's failure to comply with a judgment for the payment of a sum of money or an order of court for the payment in specified instalments or otherwise of such an amount, and which has not been executed before the commencement of this Act, shall be deemed not to have been issued.

huurgeld geëndoseer is waarby die verwydering van meubels of besittings verbied word of 'n mondelinge mededeling deur die hof om op 'n bepaalde datum te verskyn, is aan minagting van die hof skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R500 of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sodanige gevangenisstraf sonder die keuse van 'n boete: Met dien verstande dat by die toepassing van hierdie artikel die woord 'vonnis' of die woord 'bevel', na gelang van die geval, nie 'n in artikel [65] 65A (1), 65E, [65G,] 65I, 65J, 65K, 72, 74 of 74J bedoelde vonnis of bevel insluit nie."

**Wysiging van artikel 109 van Wet 32 van 1944 soos vervang deur artikel 28 van Wet 40 van 1952, gewysig deur artikel 24 van Wet 19 van 1963 en vervang deur artikel 9 van Wet 63 van 1976**

13. Artikel 109 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) 'n Vonnisiskuldeiser of administrateur kan, indien die betrokke vonnisiskuldenaar versuim om aan die bepalings van subartikel (1) te voldoen en indien die betrokke vonnis of bevel nie 'n vonnis of bevel in artikel 65A (1) bedoel is nie, 'n kennisgewing uitreik uit die hof van die distrikte waarin die vonnisiskuldenaar woon, besigheid dryf of in diens is, waarby die vonnisiskuldenaar aangesê word om voor daardie hof *in camera* te verskyn om redes aan te voer waarom hy of sy nie weens sodanige versuim ter gevangesetting verwys moet word nie."

**Invoeging van artikel 109A in Wet No. 32 van 1944**

14. Die volgende artikel word hierby na artikel 109 van die Hoofwet ingevoeg:

**"Straf op geldskuldenaar se versuim om kennis van adresverandering te gee"**

109A. 'n Vonnisiskuldenaar teen wie 'n hof vonnis gevel of 'n bevel gemaak het in artikel 65A (1) bedoel, en wat versuim om aan die bepalings van artikel 109 (1) te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R500 of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens 30 dae."

**Herroeping van artikel 3 van Wet 2 van 1977**

15. Artikel 3 van die Wet op die Afskaffing van Gyseling, 1977 (Wet No. 2 van 1977), word hierby herroep.

**Oorgangsbepaling**

16. (1) 'n Lasbrief vir die inhegtenisneming en aanhouding van 'n vonnisiskuldenaar wat uitgereik is voor die inwerkingtreding van hierdie Wet na aanleiding van so 'n vonnisiskuldenaar se versuim om te voldoen aan 'n vonnis vir die betaling van 'n bedrag geld of aan 'n bevel van 'n hof om so 'n bedrag in bepaalde paaielemente of andersins te betaal, en wat nie voor die inwerkingtreding van hierdie Wet uitgevoer is nie, word geag asof dit nie uitgereik is nie.

(2) Any judgment debtor or if the judgment debtor is a juristic person, the director or officer concerned who, at the commencement of this Act, is serving any terms of imprisonment as a result of his or her failure to comply with a judgment for the payment of a sum of money or an order of court for the payment in specified instalments or otherwise of such an amount, shall forthwith be released from the prison.

(3) Any legal proceedings instituted as a consequence of the imprisonment or contemplated imprisonment of a judgment debtor in terms of the provisions of the principal Act prior to its amendment by this Act, and which may be pending at the commencement of this Act, shall terminate forthwith.

(4) Each party to legal proceedings terminated by subsection (3), shall bear his or her own costs incurred in consequence of such legal proceedings.

(5) No claim for loss or damages arising as a consequence of the imprisonment or contemplated imprisonment of a judgment debtor in terms of the provisions of the principal Act prior to its amendment by this Act, shall be permissible.

#### Short title

17. This Act shall be called the **Magistrates' Courts Amendment Act, 1994**.

(2) 'n Vonnisskuldenaar of indien die vonnisskuldenaar 'n regspersoon is, die betrokke direkteur of beampte, wat by die inwerkingtreding van hierdie Wet enige tydperk van gevangenisstraf uitdien na aanleiding van sy of haar versuim om te voldoen aan 'n vonnis vir die betaling van 'n bedrag geld of 'n bevel van 'n hof om so 'n bedrag in bepaalde paaielemente of andersins te betaal, word onmiddellik uit die gevangenis vrygelaat.

(3) Enige geregtelike verrigtinge wat ingestel is na aanleiding van die gevangesetting of beoogde gevangesetting van 'n vonnisskuldenaar ingevolge die bepalings van die Hoofwet voor die wysiging daarvan deur hierdie Wet, en wat hangende mag wees by die inwerkingtreding van hierdie Wet, word onmiddellik gestaak.

(4) Elke party tot geregtelike verrigtinge wat ooreenkomstig subartikel (3) gestaak word, dra sy of haar eie koste deur sodanige geregtelike verrigtinge opgeleef.

(5) Geen eis vir verlies of skade wat ontstaan na aanleiding van die gevangesetting of beoogde gevangesetting van 'n vonnisskuldenaar ingevolge die bepalings van die Hoofwet voor die wysiging daarvan deur hierdie Wet, is toelaatbaar nie.

#### Kort titel

17. Hierdie Wet heet die **Wysigingswet op Landdroshowe, 1994**.

**IMPORTANT ANNOUNCEMENT**

*Closing times PRIOR TO PUBLIC HOLIDAYS for*

# LEGAL NOTICES GOVERNMENT NOTICES 1994

*The closing time is **15:00** sharp on the following days:*

- ▶ **6 October**, Thursday, for the issue of Friday **14 October**
- ▶ **8 December**, Thursday, for the issue of Thursday **15 December**
- ▶ **22 December**, Thursday, for the issue of Friday **30 December**

Late notices will be published in the subsequent issue, if under special circumstances, a late notice is being accepted, a double tariff will be charged

The copy for a **SEPARATE Government Gazette** must be handed in not later than three calendar weeks before date of publication

**BELANGRIKE AANKONDIGING**

*Sluitingstye VOOR VAKANSIEDAE vir*

# WETLIKE KENNISGEWINGS GOEWERMENSKENNISGEWINGS 1994

*Die sluitingstyd is stiptelik **15:00** op die volgende dae:*

- ▶ **6 Oktober**, Donderdag, vir die uitgawe van Vrydag **14 Oktober**
- ▶ **8 Desember**, Donderdag, vir die uitgawe van Donderdag **15 Desember**
- ▶ **22 Desember**, Donderdag, vir die uitgawe van Vrydag **30 Desember**

Laat kennisgewings sal in die daaropvolgende uitgawe geplaas word. Indien 'n laat kennisgewing wel, onder spesiale omstandighede, aanvaar word, sal 'n dubbeltarief gehef word.

Wanneer 'n **APARTE Staatskoerant** verlang word moet die kopie drie kalenderweke voor publikasie ingedien word

# IMPORTANT!!

## Placing of languages:

### *Government Gazettes*

1. Notice is hereby given that the interchange of languages in the *Government Gazette* will be effected annually from the first issue in October.
2. For the period 1 October 1994 to 30 September 1995, English is to be placed FIRST.
3. This arrangement is in conformity with Gazettes containing Act of Parliament etc. where the language sequence remains constant throughout the sitting of Parliament.
4. *It is therefore expected of you, the advertiser, to see that your copy is in accordance with the above-mentioned arrangement in order to avoid unnecessary style changes and editing to correspond with the correct style.*

—oOo—

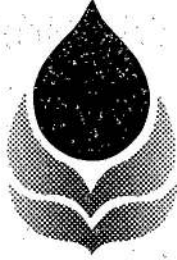
# BELANGRIK!!

## Plasing van tale:

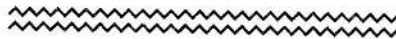
### *Staatskoerante*

1. Hiermee word bekendgemaak dat die omruil van tale in die *Staatskoerant* jaarliks geskied met die eerste uitgawe in Oktober.
2. Vir die tydperk 1 Oktober 1994 tot 30 September 1995 word Engels EERSTE geplaas.
3. Hierdie reëling is in ooreenstemming met dié van die Parlement waarby koerante met Wette ens. die taalvolgorde deurgaans behou vir die duur van die sitting.
4. *Dit word dus van u, as adverteerder, verwag om u kopie met bogenoemde reëling te laat strook om onnodige omskakeling en stylredigering in ooreenstemming te bring.*

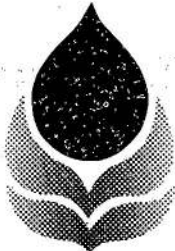
Use it

Don't abuse  it

***water is for everybody***



Werk mooi daarmee

Ons leef  daarvan

***water is kosbaar***



**STOP MURDER  
ROBBERY  
RAPE**

---

**UP TO R6000 WILL BE PAID  
FOR VALUABLE INFORMATION**

---

**SECRECY GUARANTEED**

**PHONE TOLL FREE**

**0800 11 12 13**

# WARNING

**Possession of  
illegal weapons  
could condemn**

**you to:**

**UP TO 25 YEARS IN JAIL,  
COMMUNITY AND  
FAMILY REJECTION**

**PLEASE  
HAND IT IN**

*For the sake of your community*

**CONTENTS****INHOUD**

| No.                           |                                               | Page<br>No. | Gazette<br>No. | No.                              |                                                 | Bladsy<br>No. | Koerant<br>No. |
|-------------------------------|-----------------------------------------------|-------------|----------------|----------------------------------|-------------------------------------------------|---------------|----------------|
| <b>Justice, Department of</b> |                                               |             |                | <b>Justisie, Departement van</b> |                                                 |               |                |
| <i>General Notice</i>         |                                               |             |                | <i>Algemene Kennisgewing</i>     |                                                 |               |                |
| 1079                          | Magistrates' Courts Draft Amendment Bill..... | 1           | 15996          | 1079                             | Konsepwysigingswetsontwerp op Landdroshowe..... | 1             | 15996          |