



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 406

CAPE TOWN, 23 APRIL 1999

KAAPSTAD, 23 APRIL 1999

No. 19963

OFFICE OF THE PRESIDENT

No. 495.

23 April 1999

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

No. 13 of 1999: Child Care Amendment Act, 1999.

KANTOOR VAN DIE PRESIDENT

No. 495.

23 April 1999

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

No. 13 van 1999: Wysigingswet op Kindersorg, 1999.

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.

(English text signed by the President.)
(Assented to 14 April 1999.)

ACT

To amend the Child Care Act, 1983, so as to provide for a right of appeal against certain orders relating to children; to provide for the establishment of secure care facilities; to revoke the power of the Minister to transfer certain pupils and children to any institution, custody or supervision mentioned in section 290 of the Criminal Procedure Act, 1977; to provide for the prohibition against the commercial sexual exploitation of children; and to make further provision for the estimation of a person's age in certain proceedings; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 74 of 1983, as amended by section 2 of Act 34 of 1986, section 1 of Act 86 of 1991, section 1 of Act 96 of 1996 and section 1 of Act 56 of 1998

5

1. Section 1 of the Child Care Act, 1983 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of “children’s home” of the following definition:

“ ‘commercial sexual exploitation’ means the procurement of a child to perform a sexual act for a financial or other reward payable to the child, the parents or guardian of the child, the procurer or any other person; ”;

and

- (b) by the insertion after the definition of “school of industries” of the following definitions:

“ ‘secure care’ means the physical, behavioural and emotional containment of children offering an environment and programme conducive to their care, safety and healthy development;

‘secure care facility’ means a facility established under section 28A; ”.

15

Insertion of section 16A in Act 74 of 1983

20

2. The following section is hereby inserted in Chapter 3 of the principal Act, after section 16:

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

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

(Engelse teks deur die President geteken.)
(Goedgekeur op 14 April 1999.)

WET

Tot wysiging van die Wet op Kindersorg, 1983, ten einde voorsiening te maak vir 'n reg tot appèl teen sekere bevels met betrekking tot kinders; voorsiening te maak vir die oprigting van veilige versorgingsfasiliteite; die Minister se bevoegdheid te herroep om sekere leerlinge en kinders na 'n inrigting, bewaring of toesig vermeld in artikel 290 van die Strafproseswet, 1977, oor te plaas; voorsiening te maak vir die verbod op die kommersiële seksuele eksploitering van kinders; en verder voorsiening te maak vir die skatting van 'n persoon se ouderdom gedurende sekere verrigtings; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 74 van 1983, soos gewysig deur artikel 2 van Wet 34 van 1986, artikel 1 van Wet 86 van 1991, artikel 1 van Wet 96 van 1996 en 5 artikel 1 van Wet 56 van 1998

1. Artikel 1 van die Wet op Kindersorg, 1983 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur die volgende omskrywing na die omskrywing van “kinderhuis” in te voeg:
- 10 “ ‘komersiële seksuele eksploitering’ die bewerkstelling van ’n kind om ’n seksuele daad teen ’n finansiële of ander vergoeding te verrig wat aan die kind, die ouers of voog van die kind, die bewerkstelliger of enige ander persoon betaalbaar is;”; en
- (b) deur die volgende omskrywings na die omskrywing van “tandarts” in te voeg:
- 15 “ ‘veilige versorging’ die fisieke, gedrags- en emosionele inperking van kinders wat ’n omgewing en program bied wat bevorderlik is vir hulle sorg, veiligheid en gesonde ontwikkeling; ‘veilige versorgingsfasiliteit’ ’n fasiliteit kragtens artikel 28A ingestel;”.

20 Invoeging van artikel 16A in Wet 74 van 1983

2. Die volgende artikel word hierby in Hoofstuk 3 van die Hoofwet, na artikel 16 ingevoeg:

“Appeals

16A. An appeal shall lie against any order made or any refusal to make an order in terms of section 11, 15 or 38(2)(a), or against the variation, suspension or rescission of such order, to the competent division of the High Court of South Africa, and if brought, shall be noted and prosecuted as if it were an appeal against a civil judgement of a magistrate's court.” 5

Insertion of section 28A in Act 74 of 1983

3. The following section is hereby inserted in the principal Act after section 28:

“Secure care facilities

28A. The Minister may, with the concurrence of the Minister of Finance, out of monies appropriated by Parliament for that purpose, establish and maintain secure care facilities for the reception and secure care of children awaiting trial or sentence.” 10

Amendment of section 34 of Act 74 of 1983, as amended by section 10 of Act 86 of 1991 15

4. Section 34 of the principal Act is hereby amended—

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

“(1) The Minister may [, **subject to the provisions of subsection (3),**] by order in writing transfer any pupil or child from any institution to which he or she has lawfully been sent or from any custody (except the custody of his or her parent or guardian or of the person mentioned in section 15(1)(a)) in which or supervision under which he or she has lawfully been placed, to any institution, custody or supervision mentioned in section 15 of this Act [**for section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).**]”; and 20

(b) by the deletion of subsection (3). 25

Insertion of section 50A in Act 74 of 1983

5. The following section is hereby inserted in the principal Act after section 50:

“Commercial sexual exploitation of children

50A. (1) Any person who participates or is involved in the commercial sexual exploitation of a child shall be guilty of an offence. 30

(2) Any person who is an owner, lessor, manager, tenant or occupier of property on which the commercial sexual exploitation of a child occurs and who, within a reasonable time of gaining information of such occurrence, fails to report such occurrence at a police station, shall be guilty of an offence. 35

(3) Any person who is convicted of an offence in terms of this section, shall be liable to a fine, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.”. 40

Amendment of section 54 of Act 74 of 1983 40

6. Section 54 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Whenever in any proceedings in terms of this Act the age of any person is a relevant fact of which no or insufficient evidence is available, the officer presiding at those proceedings may estimate the age of that person by his or her appearance [or] and from any information which is available, and the age so estimated shall for the purposes of this Act be deemed to be the true age of that person.”. 45

“Appèlle

16A. Daar is 'n appèl na die bevoegde afdeling van die Hoë Hof van Suid-Afrika om teen enige bevel of weiering om 'n bevel ingevolge artikel 11, 15 of 38(2)(a) te maak, of teen die wysiging, opskorting of intrekking van so 'n bevel, en indien dit ingestel word, word dit aangeteken en voortgesit asof dit 'n appèl teen 'n siviele bevinding van 'n landdroshof is.”

Invoeging van artikel 28A in Wet 74 van 1983

3. Die volgende artikel word hierby in die Hoofwet na artikel 28 ingevoeg:

10 **“Veilige versorgingsfasiliteite**

28A. Die Minister kan met die instemming van die Minister van Finansies uit geld wat deur die Parlement vir die doel bewillig is, veilige versorgingsfasiliteite oprig en in stand hou vir die opname en veilige versorging van kinders in afwagting op hul verhoor of vonnis.”

15 **Wysiging van artikel 34 van Wet 74 van 1983, soos gewysig deur artikel 10 van Wet 86 van 1991**

4. Artikel 34 van die Hoofwet word hierby gewysig—

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

20 “(1) Die Minister kan[, behoudens die bepalinge van subartikel (3)] by skriftelike bevel 'n leerling of kind oorplass van 'n inrigting waarna hy of sy wettiglik verwys is, of van 'n bewaring (behalwe die bewaring van sy of haar ouer of voog of van die persoon in artikel 15(1)(a) vermeld) waarin of toesig waaronder hy of sy wettiglik geplaas is, na enige inrigting, bewaring of toesig wat in artikel 15 van hierdie

25 Wet [of artikel 290 van die Strafproseswet, 1977 (Wet No. 51 van 1977),] vermeld word.”; en

(b) deur subartikel (3) te skrap.

Invoeging van artikel 50A in Wet 74 van 1983

5. Die volgende artikel word hierby in die Hoofwet na artikel 50 ingevoeg:

30 **“Kommersiële seksuele eksploitering van kinders**

50A. (1) Enigiemand wat deelneem aan of betrokke is by die kommersiële seksuele eksploitering van 'n kind is aan 'n misdryf skuldig.

35 (2) Enigiemand wat die eienaar, verhuurder, bestuurder, huurder of okkupeerder van eiendom is waarop die kommersiële seksuele eksploitering van 'n kind plaasvind en wat, binne 'n redelike tyd nadat inligting van sodanige voorval te wete gekom is, versuim om sodanige voorval by 'n polisiestasie aan te meld, is aan 'n misdryf skuldig.

40 (3) Enigiemand wat aan 'n misdryf ingevolge hierdie artikel skuldig bevind word, is strafbaar met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar, of met beide sodanige boete en sodanige gevangenisstraf.”

Wysiging van artikel 54 van Wet 74 van 1983

6. Artikel 54 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

45 “(1) Wanneer die ouderdom van 'n persoon by verrigtings ingevolge hierdie Wet 'n tersaaklike feit is waaromtrent geen of onvoldoende bewys beskikbaar is nie, kan die beampte wat by daardie verrigtings voorsit, die ouderdom van die persoon volgens sy of haar voorkoms [of] en op grond van beskikbare inligting skat, en die aldus geskatte ouderdom word by die toepassing van hierdie Wet geag die ware ouderdom van daardie persoon te wees.”

50

Short title and commencement

7. This Act is called the Child Care Amendment Act, 1999, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Kort titel en inwerkingtreding

7. Hierdie Wet heet die Wysigingswet op Kindersorg, 1999, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

