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Kaapstad, Julie

THE PRESIDENCY

No. 664 20 July 2001

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

No. 17 of 2001: Criminal Procedure Amendment Act, 2001.

DIE PRESIDENSIE

No. 664 20 Julie 2001

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

No. 17 van 2001: Strafproseswysigingswet, 2001.



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GENERAL EXPLANATORY NOTE:

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

*(English text signed by the Acting President.)
(Assented to 13 July 2001.)*

ACT

To amend the Criminal Procedure Act, 1977, so as to further regulate the presentation of evidence through an intermediary; and to provide for matters connected therewith.

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

Substitution of section 170A of Act 51 of 1977, as inserted by section 3 of Act 135 of 1991

1. The following section is hereby substituted for section 170 of the Criminal Procedure Act, 1977: 5

“Evidence through intermediaries

170A. (1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary. 10

(2) (a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary under subsection (1), except examination by the court, shall take place in any manner other than through that intermediary. 15

(b) The said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.

(3) If a court appoints an intermediary under subsection (1), the court may direct that the relevant witness shall give his or her evidence at any place— 20

(a) which is informally arranged to set that witness at ease;

(b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and 25

ALGEMENE VERDUIDELIKENDE NOTA:

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

*(Engelse teks deur die Waarnemende President geteken.)
(Goedgekeur op 13 Julie 2001.)*

WET

Tot wysiging van die Strafproseswet, 1977, ten einde die aanbied van getuienis deur middel van 'n tussenganger verder te reël; en om vir verbandhoudende aangeleenthede voorsiening te maak.

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

Vervanging van artikel 170A van Wet 51 van 1977, soos ingevoeg deur artikel 3 van Wet 135 van 1991

- 5 **1.** Artikel 170A van die Strafproseswet, 1977, word hierby deur die volgende artikel vervang:

“Getuienis deur bemiddeling van tussengangers

10 **170A.** (1) Wanneer strafregtelike verrigtinge voor 'n hof hangende is en dit aan daardie hof blyk dat dit 'n getuie onder die ouderdom van agtien jaar aan onredelike geestespanning of -lyding sal blootstel indien hy of sy by daardie verrigtinge getuig, kan die hof, behoudens subartikel (4), 'n bevoegde persoon as tussenganger aanstel ten einde so 'n getuie in staat te stel om sy of haar getuienis deur bemiddeling van daardie tussenganger af te lê.

15 (2) (a) Geen ondervraging, kruisondervraging of herondervraging van 'n getuie ten opsigte van wie 'n hof 'n tussenganger kragtens subartikel (1) aangestel het, behalwe ondervraging deur die hof, mag op 'n ander wyse as deur bemiddeling van daardie tussenganger plaasvind nie.

20 (b) Bedoelde tussenganger kan, tensy die hof anders gelas, die algemene strekking van 'n vraag aan die betrokke getuie oordra.

(3) Indien 'n hof 'n tussenganger kragtens subartikel (1) aanstel, kan die hof gelas dat die betrokke getuie sy of haar getuienis aflê op 'n plek—

(a) wat informeel ingerig is om daardie getuie op sy of haar gemak te stel;

25 (b) wat so geleë is dat iemand wie se teenwoordigheid daardie getuie mag ontstel, buite die sig en gehoor van daardie getuie is; en

(c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

(4) (a) The Minister may by notice in the *Gazette* determine the persons or the category or class of persons who are competent to be appointed as intermediaries. 5

(b) An intermediary who is not in the full-time employment of the State shall be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as the Minister, with the concurrence of the Minister of Finance, may determine. 10

(5) (a) No oath, affirmation or admonition which has been administered through an intermediary in terms of section 165 shall be invalid and no evidence which has been presented through an intermediary shall be inadmissible solely on account of the fact that such intermediary was not competent to be appointed as an intermediary in terms of a regulation referred to in subsection (4)(a), at the time when such oath, affirmation or admonition was administered or such evidence was presented. 15

(b) If in any proceedings it appears to a court that an oath, affirmation or admonition was administered or that evidence has been presented through an intermediary who was appointed in good faith but, at the time of such appointment, was not qualified to be appointed as an intermediary in terms of a regulation referred to in subsection (4)(a), the court must make a finding as to the validity of that oath, affirmation or admonition or the admissibility of that evidence, as the case may be, with due regard to— 20

- (i) the reason why the intermediary concerned was not qualified to be appointed as an intermediary, and the likelihood that the reason concerned will affect the reliability of the evidence so presented adversely; 25
- (ii) the mental stress or suffering which the witness, in respect of whom that intermediary was appointed, will be exposed to if that evidence is to be presented anew, whether by the witness in person or through another intermediary; and 30
- (iii) the likelihood that real and substantial justice will be impaired if that evidence is admitted. 35

(6) (a) Subsection (5) does not prevent the prosecution from presenting anew any evidence which was presented through an intermediary referred to in that subsection.

(b) The provisions of subsection (5) shall also be applicable in respect of all cases where an intermediary referred to in that subsection has been appointed, and in respect of which, at the time of the commencement of that subsection— 40

- (i) the trial court; or
- (ii) the court considering an appeal or review, has not delivered judgment. 45

Short title

2. This Act is called the Criminal Procedure Amendment Act, 2001.

(c) wat die hof en iemand wie se teenwoordigheid by die betrokke verrigtinge noodsaaklik is in staat stel om, hetsy direk of deur middel van enige elektroniese of ander toestelle, daardie tussenganger sowel as daardie getuie gedurende sy of haar getuienis te sien en te hoor.

(4) (a) Die Minister kan die persone of die kategorie of klas persone wat bevoeg is om as tussengangers aangestel te word by kennisgewing in die *Staatskoerant* bepaal.

(b) Aan 'n tussenganger wat nie in die heeltydse diens van die Staat is nie, word die reis-, verblyf- en ander toelaes ten opsigte van die dienste deur hom of haar gelewer, betaal wat die Minister, met die instemming van die Minister van Finansies, bepaal.

(5) (a) Geen eed, bevestiging of waarskuwing ingevolge artikel 165 deur middel van 'n tussenganger toegedien, is ongeldig nie en geen getuienis deur middel van 'n tussenganger aangebied, is ontoelaatbaar nie slegs op grond van die feit dat daardie tussenganger, op die tydstip wat daardie eed, bevestiging of waarskuwing toegedien is of wat daardie getuienis aangebied is, nie bevoeg was om ingevolge 'n regulasie in subartikel (4)(a) bedoel as 'n tussenganger aangestel te word nie.

(b) Indien dit gedurende enige verrigtinge vir 'n hof blyk dat 'n eed, bevestiging of waarskuwing toegedien is of dat getuienis aangebied is deur middel van 'n tussenganger wat in goeie trou aangestel is, maar wat nie op die tydstip van sodanige aanstelling gekwalifiseerd was om ingevolge 'n regulasie in subartikel (4)(a) bedoel as 'n tussenganger aangestel te word nie, moet die hof 'n bevinding maak rakende die geldigheid van daardie eed, bevestiging of waarskuwing of die toelaatbaarheid van daardie getuienis, na gelang van die geval, met behoorlike inagneming van—

(i) die rede waarom die betrokke tussenganger nie gekwalifiseerd was om as 'n tussenganger aangestel te word nie, en die waarskynlikheid dat die betrokke rede 'n negatiewe uitwerking op die betroubaarheid van die getuienis wat aldus aangebied is, sal hê;

(ii) die geestespanning of -lyding waaraan die getuie ten opsigte van wie daardie tussenganger aangestel is, blootgestel sal word indien daardie getuienis opnuut aangebied moet word, hetsy deur die getuie persoonlik of deur middel van 'n ander tussenganger; en

(iii) die waarskynlikheid dat aan ware en substantiewe geregtigheid afbreuk gedoen sal word indien daardie getuienis toegelaat word.

(6) (a) Subartikel (5) verhinder nie die vervolging om getuienis wat deur middel van 'n tussenganger in daardie subartikel bedoel aangebied is, opnuut aan te bied nie.

(b) Die bepalings van subartikel (5) is ook van toepassing ten opsigte van alle sake waarin 'n tussenganger in daardie subartikel bedoel aangestel is, en ten opsigte waarvan, op die tydstip van die inwerkingtreding van daardie subartikel—

(i) die verhoorhof; of

(ii) die hof wat 'n appèl of hersiening oorweeg, nog nie uitspraak gelewer het nie.”.

Kort titel

2. Hierdie Wet heet die Strafproseswysigingswet, 2001.

