

PLANT IMPROVEMENT AMENDMENT ACT

PRESIDENT'S OFFICE

No. 676.
19 April 1996

NO. 25 OF 1996: PLANT IMPROVEMENT AMENDMENT ACT, 1996.

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

General Explanatory Note:

Words in ***bold italic*** indicate omissions from existing enactments.

Words in *italic* indicate insertions in existing enactments.

ACT

To amend the Plant Improvement Act, 1976, so as to alter, insert or delete certain definitions; to prohibit the conducting of business on unregistered premises; to further regulate the registration of premises; to make further provision for the term of registration; to further regulate the renewal of registration; to make further provision for exemption from registration; to further regulate the provisions relating to the varietal list; to further regulate the recognition and evaluation of varieties of plants; to provide for inspection for quality control; to adjust penalties; and to make further provision for presumptions in criminal proceedings; to provide that the Plant Improvement Act, 1976, shall apply throughout the Republic; to repeal certain laws; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 16 April 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, a follows:-

Amendment of section 1 of Act 53 of 1976, as amended by section 1 of Act 10 of 1979, section 1 of Act 39 of 1983 and section 1 of Act 17 of 1991

1. Section 1 of the Plant Improvement Act, 1976 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for paragraph (a) of the definition of "business" of the following paragraph:

"(a) ***a nursery the sale of plants;***";

(b) by the insertion after paragraph (a) of the definition of "business" of the following paragraph:

"(bA) *the cultivation of plants for sale*";

(c) by the substitution for paragraph (e) of the definition of "business" of the following paragraph:

"(e) *the running of a test laboratory*";

(d) by the substitution for the definition of "cultivate" of the following definition:

" 'cultivate' *in relation to plants and propagating material* means ***promote or stimulate the growth of a plant, or care for propagating material*** grow plants and care for plants with a view to the propagation or multiplication of plants or propagating material; and 'cultivation' has a corresponding meaning";

(e) by the deletion of the definition of "establishment";

(f) by the deletion of the definition of "nursery";

(g) by the substitution for the definition of "owner or occupier" of the following definition:

" 'owner or occupier', in relation to ***an establishment premises***, means the person who is the owner or lessee of the ***establishment premises*** or who otherwise has the right of management, care, control or use thereof-";

(h) by the substitution for the definition of "plant" of the following definition:

" '*plant*' includes any part of a plant";

(i) by the substitution for the definition of "propagating material" of the following definition:

" '*propagating material*' means any material of a plant that can be used for the propagation of a plant";

(j) by the substitution for the definition of "sell" of the following definition:

" 'sell' includes agree to sell, or to offer, advertise, *prepare*, keep, expose, transmit, send, convey or deliver for sale, or to exchange or to dispose of ***to any person*** in any manner for a consideration; and 'sold' and 'sale' have corresponding meanings"; and

(k) by the substitution for the definition of "variety" of the following definition:

" 'variety' means ***any cultivar, clone, breeding line or hybrid of a kind of plant which can be cultivated*** any plant grouping within a single botanical taxon of the lowest known classification, which grouping can be–

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and

(c) considered as a unit with regard to its suitability for being propagated unchanged."

Substitution of section 6 of Act 53 of 1976, as substituted by section 3 of Act 10 of 1979

2. The following section is hereby substituted for section 6 of the principal Act:

"Prohibition of conducting of business on unregistered premises

6. *Business shall only be conducted on premises which have been registered in terms of this Act or which are exempt from the provisions of this section in terms of section 10.*"

Amendment of section 7 of Act 53 of 1976, as amended by section 4 of Act 10 of 1979, section 5 of Act 39 of 1983 and section 2 of Act 17 of 1991

3. Section 7 of the principal Act is hereby amended–

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

"(1) (a) An application for the registration of any premises in respect of a business under this Act shall be made to the registrar *in the prescribed manner* by the person intending to conduct the business on such premises, ***in the form determined by the registrar and in the manner prescribed*** and shall be accompanied by the prescribed application fee ***prescribed***.

(b) *The prescribed application fee may differ in respect of different classes of applications.*";

(b) by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) *The registrar shall register premises and issue a certificate of registration in respect thereof if–*

(a) *the premises comply with the prescribed requirements;*

(b) the practices to be employed in the business in question comply with the prescribed requirements;

(c) the prescribed facilities for the business in question are available at the premises; and

(d) the person in direct control of the premises has sufficient knowledge of the practices to be employed in the business.

(4) The registrar may refuse to register premises if-

(a) the owner or occupier has been found guilty of an offence under this Act or has been sequestrated or liquidated whilst conducting any business; or

(b) the applicant has been found guilty of an offence under this Act or has been sequestrated or liquidated whilst conducting any business; or

(c) the applicant is or was director, functionary or member of a juristic person which was found guilty of an offence under this Act or was liquidated whilst conducting any business.", and

(c) by the insertion after subsection (4) of the following subsection:

"(4A) The registrar may make the registration of premises subject to such conditions as may be necessary."

Amendment of section 8 of Act 53 of 1976, as substituted by section 6 of Act 39 of 1983

4. Section 8 of the principal Act is hereby amended-

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

*"(1) The registration of **an establishment premises** shall, subject to earlier termination under this Act, be valid *for a period of two years* from the date of issue of the certificate of registration under section 7(3) **to 31 August of the first calendar year the date of which is expressed in an odd number and following on such date of issue** and shall be renewable."; and*

(b) by the deletion of subsection (2).

Amendment of section 9 of Act 53 of 1976, as amended by section 5 of Act 10 of 1979, section 7 of Act 39 of 1983 and section 3 of Act 17 of 1991

5. Section 9 of the principal Act is hereby amended-

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

"(1) (a) The person to whom a certificate of registration has been issued under section 7(3) may, till 30 days after the expiry of the registration but not later, apply to the registrar ***in the form determined by the registrar and*** in the ***prescribed manner prescribed*** for the renewal of the registration, and the application shall be accompanied by the prescribed renewal fee and such information or documents as may be prescribed or required by the registrar.

(b) The prescribed renewal fee may differ in respect of different classes of renewal applications."

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The registrar may renew the registration if ***he is satisfied the provisions of paragraphs (a) to (d) of section 7(3) are still being complied with, and if-***"

(c) by the deletion of paragraphs (a), (b), (c) and (d) of subsection (2);

(d) by the substitution for paragraphs (e) and (f) of subsection (2) of the following paragraphs, respectively:

"(e) ***that*** the prescribed records regarding the plants or propagating material handled at the ***establishment premises*** are being kept for the period and in the manner prescribed, and ***that*** such information in connection therewith as ***he the registrar*** may require has been furnished to him *or her*; and

(f) ***that*** any condition contemplated in section ***7(4) or any decision or direction under section 25*** 7(4A) has been complied with."

(e) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

"(3) The registrar may renew the registration of ***an establishment premises*** subject to such conditions as he *or she* may in each case determine.

(4) If the registrar renews the registration of ***an establishment premises*** he *or she* shall notify the person who applied for such renewal in writing thereof, and may, if he *or she* deems it necessary, issue a fresh certificate of registration in respect thereof.

(5) The renewal of the registration of ***an establishment premises*** shall, *subject to earlier termination under this Act*, be valid ***until 31 August of the first calendar year the date of which is expressed in an odd number and following the year in which the renewal is effected for a period of two years*** and an application for the further renewal thereof shall be made biennially in accordance with the provisions of subsection (1).";

(f) by the insertion after subsection (5) of the following subsection:

"(6) *The registrar may refuse to renew the registration if any of the provisions of section 7(4) apply.*"; and

(g) by the substitution for subsection (7) of the following subsection:

"(7) If the registrar refuses *an application for the renewal of the registration of an establishment premises* he *or she* shall advise the person who applied for the renewal in writing of his *or her* decision and of the grounds on which it is based."

Substitution of section 10 of Act 53 of 1976, as substituted by section 6 of Act 10 of 1979

6. The following section is hereby substituted for section 10 of the principal Act:

"Exemption from registration

10. (1) The Minister may by notice in the Gazette and on such conditions as he *or she* may specify in the notice, exempt *any premises* from the provisions of section 6 *in respect of any business conducted on particular premises or any* kind of business.

(2) *The registrar may on application and subject to the conditions determined by him or her, exempt any premises from the provisions of section 6.*"

Substitution of section 11 of Act 53 of 1976

7. The following section is hereby substituted for section 11 of the principal Act:

"Termination of registration

11. (1) The registrar may at any time terminate the registration of *an establishment premises* or *refuse to renew the registration of premises* if *he is satisfied that a requirement referred to in section 9(2) or a condition determined under section 7(4) or 9(3) has not been complied with-*

(a) *a condition of or a requirement for the registration of premises in terms of section 7 or the renewal of registration in terms of section 9 has not been complied with; or*

(b) *the person who applied for the registration or renewal, or the owner or occupier of the premises, has been found guilty of an offence under this Act.*

(2) If the registrar terminates the registration of *an establishment premises* or *refuses to renew the registration of premises* in terms of this section, he *or she* shall in writing advise the person to whom the certificate of registration in respect thereof was issued of his *or her* decision and of the grounds on which it is based."

Substitution of section 12 of Act 53 of 1976, as amended by section 7 of Act 10 of 1979 and section 8 of Act 39 of 1983

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

"Display, lapsing and return of certificate of registration

12. (1) The owner or occupier of ***an establishment premises*** shall cause the certificate of registration issued in respect thereof to be displayed at all times in a prominent position at or near the main entrance to the ***establishment premises***.

(2) The registration of ***an establishment premises*** shall lapse-

(a) if the person to whom the certificate of registration in respect thereof was issued ceases to be the owner or occupier of the ***establishment premises***;

(b) if the premises in question cease to be used for the ***purposes of an establishment conduct of the business for which it was registered***; or

(c) if an application for the renewal thereof is not received by the registrar within 30 days of the date of expiry thereof.

(3) (a) If a person to whom a certificate of registration in respect of ***an establishment premises*** has been issued dies or is declared by any court to be incapable of managing his *or her* own affairs or a prodigal or becomes a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), or if the estate of such a person is sequestered *or if such a person is liquidated*, the executor, curator, ***or*** trustee *or liquidator* of such person, as the case may be, may, subject to any law relating to deceased estates, mental health, ***or*** insolvency, during the currency of the certificate of registration and without formal transfer of the certificate, ***operate the establishment conduct the business in question on such premises*** either personally or by an agent approved by the registrar in writing.

(b) For the period pending the appointment of such executor, curator, ***or*** trustee *or liquidator*, the person managing the affairs of the person concerned shall, for the purposes of this subsection, be deemed to be his *or her* executor, curator, ***or*** trustee *or liquidator*, as the case may be.

(4) When the registration of ***an establishment premises*** has been terminated under section 11 or has lapsed in terms of subsection (2) of this section, the relevant certificate of registration shall be returned within the prescribed period to the registrar by the person to whom it was issued."

Substitution of section 13 of Act 53 of 1976, as amended by section 8 of Act 10 of 1979

9. The following section is hereby substituted for section 13 of the principal Act:

"Requirements relating to sale of plants and propagating material

13. (1) *Plants and propagating material shall only be sold for purposes of cultivation–*

(a) if the plants and propagating material are of a variety which is entered in the varietal list;

(b) under the denomination entered in respect thereof in the varietal list;

(c) if no qualifying term or reference is added to or used in connection with the denomination referred to in paragraph (b);

(d) if the plant or propagating material, as the case may be, complies with the requirements prescribed in respect thereof; and

(e) if, in the case of–

(i) propagating material, the material is prepackaged or is packed in containers which comply with the prescribed requirements and are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; or

(ii) a plant, the prescribed information appears on a label affixed to the plant or on the container in which the plant grows or is packed.

(2) The registrar may, on good cause shown in writing, give written exemption from compliance with one or more of the requirements referred to in subsection (1) subject to such conditions as he or she may in each case determine."

Amendment of section 14 of Act 53 of 1976, as amended by section 4 of Act 17 of 1991

10. Section 14 of the principal Act is hereby amended–

(a) by the deletion of the proviso to paragraph (b); and

(b) by the substitution in paragraph (c) for the words preceding the proviso of the following words:

"to the sale of propagating material by the producer thereof to *the owner or occupier of a registered **establishment** premises*".

Substitution of section 15 of Act 53 of 1976, as amended by section 9 of Act 39 of 1983 and section 5 of Act 17 of 1991

11. The following section is hereby substituted for section 15 of the principal Act:

"Varietal list

15. (1) The registrar shall keep a list in which shall be entered–

(a) the denomination ***used in the Republic for a variety on the date on which the kind of plant to which such variety belongs became or becomes a kind of plant to which this Act applies*** by which a variety is generally known on the date on which the kind of plant to which the variety belongs, has been declared to be a kind of plant for the purposes of this Act in terms of section 2; or

(b) the denomination of a variety recognised in terms of section 20; or

(c) the denomination of a variety in respect of which a plant breeder's right has been ***granted*** registered in terms of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976) ***and in respect of which the holder of such right requests that it be entered in such list; and or***

(d) ***such other particulars regarding any variety referred to in paragraph (a), (b) or (c) as the registrar, subject to the provisions of this Act, may deem necessary the denomination by which a variety is known internationally.***

(2) ***A denomination referred to in subsection (1)–***

(a) shall, in the case of a variety referred to in paragraph (a), be the denomination by which the variety is generally known or, if the variety is generally known by more than one denomination, the denomination determined therefor by the registrar;

(b) shall, in the case of a variety referred to in paragraph (b), be the denomination approved in respect thereof; and

(c) shall, in the case of a variety referred to in paragraph (c), be the denomination registered in respect thereof The registrar may enter in the varietal list such other particulars regarding a variety referred to in subsection (1) as he or she may deem necessary.

(3) Notwithstanding the provisions of subsection (1), the registrar may, independent of any specific variety or in addition to any variety entered in the list, include all the varieties or any further variety of any kind of plant in the varietal list.

(4) *If a variety is known by more than one denomination or by an unacceptable denomination, the registrar shall enter in the varietal list such denomination for the variety as may be determined by him or her.*

(5) The varietal list kept in terms of section 8 of the Seeds Act, 1961 (Act No. 28 of 1961), shall be incorporated in and form part of the list kept under this section, and any document, *information or other proof* supplied or furnished to the registrar under that Act in terms of any provision thereof, shall be deemed to have been *supplied or* furnished to the registrar under the corresponding provision of this Act.

(6) The registrar shall ***from time to time publish by notice in the Gazette the prescribed particulars regarding the varieties included in the varietal list*** furnish

to any person a copy of the varietal list on request."

Amendment of section 16 of Act 53 of 1976, as amended by section 7 of Act 17 of 1991

12. Section 16 of the principal Act is hereby amended-

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

*"(a) shall be made to the registrar **in the form determined by the registrar and** in the prescribed manner **prescribed**;"*

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

*"(c) shall, in the case of a variety bred or discovered by a person other than the applicant, be accompanied **if so required by the registrar** by the written **authority** authorisation of the breeder or discoverer's and*

(c) by the addition of the following subsection:

"(3) (a) The registrar may, on good cause shown by the applicant in writing, give written exemption from compliance with the requirement referred to in subsection (2)(c).

(b) Neither the registrar nor the State shall be liable for any claim as a result of an exemption granted in terms of paragraph (a)."

Amendment of section 17 of Act 53 of 1976

13. Section 17 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (a), (b) and (c) of subsection (1) of the following paragraphs, respectively:

*"(a) it is **by reason of any important characteristic** clearly distinguishable from any other variety of the same kind of plant of which the existence is a matter of common knowledge **whatever the origin, artificial or natural, of the initial variation from which it resulted may be** at the time of the filing of the application;*

*(b) it is, **sufficiently homogeneous having regard to the particular features of the sexual reproduction or vegetative propagation thereof** subject to the variation that may be expected from the particular features of the propagation of the variety, sufficiently uniform with regard to the characteristics thereof;*

*(c) it is stable **with regard to the essential characteristics thereof and remains true to the description thereof after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle** in that the characteristics of the variety remain unchanged after*

repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle; and";

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

"(2) A characteristic referred to in subsection (1)(a) ***may be of a morphological or physiological or any other nature and*** shall be *of* such ***a nature*** that it is clearly recognizable and ***precisely*** describable."

Amendment of section 18 of Act 53 of 1976, as substituted by section 11 of Act 39 of 1983

14. Section 18 of the principal Act is hereby amended-

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

"(2) The registrar shall, *in order to enable him or her to determine whether a variety may be recognized-*

(a) ***either*** undertake *or cause to be undertaken* such tests and trials as he *or she* may deem necessary with a variety in respect of which an application is being considered under Subsection (1); *or*

(b) ***or*** use the results of tests and trials undertaken with that variety and obtained by him *or her* in terms of an agreement referred to in section 15A (a)

in order to enable him to determine whether such a variety may be recognized."

(b) by the addition of the following subsections:

"(5)(a) *The person whose application for the recognition of a variety is being considered shall furnish the registrar within 12 months from the filing of the application with everything required by the registrar in terms of this section for the examination of the application for the recognition of a variety, including, where applicable-*

(i) plants and propagating material for the undertaking of tests and trials,

(ii) any information, documents or other proof, and

(iii) written undertaking or suitable guarantees for the reimbursement of costs.

(b) The date of the application shall be deemed to be the day on which the final requirements for the consideration of the application are received by the registrar.

(6)(a) *The registrar may in writing on application grant extension from compliance with subsection (5) for a specified period of time.*

(b) An application for extension shall be submitted to the registrar in writing and shall set out reasons why extension should be granted."

Amendment of section 19 of Act 53 of 1976, as amended by section 12 of Act 39 of 1983

15. Section 19 of the principal Act is hereby amended by the addition of the word or" at the end of paragraph (h) of subsection (1) and the addition to the said subsection of the following paragraph:

"(i) that the provisions of section 18 have not been complied with at the filing of the application."

Substitution of section 20 of Act 53 of 1976, as amended by section 13 of Act 39 of 1983

16. The following section is hereby substituted for section 20 of the principal Act:

"Recognition of variety

20. (1) *If Subject to the provisions of subsection (2), the registrar shall, after considering an application in terms of section 18 and examining the results of any tests or trials conducted with **the** a variety, **in question, is of the opinion** recognize the variety and enter it in the varietal list if-*

(a) **that** the application conforms to the requirements of this Act; **and**

(b) **that** the variety complies with the requirements referred to in section 17; **and**

(c) *all moneys payable in terms of this Act in respect of the application have been paid*

he shall recognize the variety and enter it in the varietal list if all moneys payable in terms of this Act in respect of that application have been paid.

(2) **Notwithstanding the provisions of subsection (1) The registrar may refuse to recognize a variety if-**

(a) **the registrar may refuse to recognize a variety if, in his opinion** it is in the public interest to do so;

(b) **the registrar shall refuse to recognize a variety if the Minister he or she, after an evaluation referred to in terms of section 22, directs him to do so; and**

(c) **the decides that the variety is undesirable for use.**

(3) *The registrar shall not recognise a variety before-*

(i) (a) **the Minister** he or she has decided under section 22(1) not to investigate the variety; or

(ii) **the Minister has under section 22(5) published the results of the evaluation or has under section 22(6) informed the registrar that he has decided not to publish such results; or**

(iii) (b) the prescribed period, reckoned from the date on which the plants and propagating material were supplied to the **Minister registrar** under section 22(3) (a) for the first time, has expired

whichever event may occur first.

(3)(4) The registrar shall in respect of each variety which is recognised-

(a) enter the applicable particulars referred to in section 15 in the varietal list; and

(b) **by notice in the Gazette publish such particulars relating to the recognition of the variety as may be prescribed; and**

(c) inform the applicant in writing of such recognition.

(5) *If the registrar refuses to recognize a variety in terms of this section, he or she shall in writing advise the person who applied for recognition of a variety of his or her decision and of the grounds on which it is based."*

Amendment of section 21 of Act 53 of 1976

17. Section 21 of the principal Act is hereby amended-

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

"(a) on application made to him *or her* and on payment of the prescribed fees;"

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

"(2) The registrar may delete the denomination of a variety entered in the varietal list if **he is satisfied-**

(a) **that** any information submitted to him *or her* in the application for the recognition of such variety or in connection with such an application was incorrect and **that** the variety would not have been recognised if he *or she* had known that the information was incorrect; or

(b) **that** information has come to light which, if discovered earlier, would have resulted in the refusal of such application; or

(c) **that** it is in the public interest to delete it; or

(d) **that** plants and propagating material of such variety capable of reproducing the variety in such a manner that the **morphological, physiological and other** characteristics thereof correspond with the characteristics described at the time of the recognition thereof, cannot readily be obtained; or

(e) **that** the variety no longer conforms to the requirements referred to in section 17; or

(f) after an evaluation referred to in section 22, he or she decides that the use of the variety is undesirable

and the registrar shall delete the denomination of such a variety if the Minister, after an evaluation referred to in section 22, directs him to do so."; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) If the registrar deletes the denomination of a variety from the varietal list, he or she shall in writing advise the person who applied For recognition of the variety of his or her decision and of the grounds on which it is based, unless that person's identity and address is unknown to the registrar."

Substitution of section 22 of Act 53 of 1976

18. The following section is hereby substituted for section 22 of the principal Act:

"Evaluation of variety

22. (1) *The registrar may, if he or she deems it necessary, evaluate the usefulness of a variety for agricultural or industrial purposes.*

(2) *For the purposes of subsection (1), the registrar may investigate–*

(a) *any variety in respect of which an application for recognition has been submitted in terms of section 16; or*

(b) *any variety of which the denomination has been entered in the varietal list.*

(3) *The prescribed quantity or mass of plants or propagating material of the variety in question required for the purpose of the evaluation–*

(a) *shall, in the case of a variety referred to in subsection (2)(a), be supplied free of charge to the registrar by the applicant at the prescribed time and place; and*

(b) *may, in the case of a variety referred to in subsection (2)(b), be procured by the registrar against payment from any person.*

(4) *The registrar may, in order to enable him or her to evaluate a variety–*

- (a) investigate the variety in the manner which he or she deems expedient;*
- (b) cause the variety to be investigated;*
- (c) use the results of tests and trials conducted with that variety and obtained by him or her in terms of an agreement referred to in section 15A.*
- (5) The registrar may, as a result of the evaluation of a variety–*
- (a) if an application for recognition has been filed with him or her, either recognize the variety or refuse the application; or*
- (b) if the variety has been entered in the varietal list, either retain it in the list or delete it.*
- (6) If plants or propagating material cannot be supplied or procured as contemplated in subsection (3), the registrar may–*
- (a) in the case of a variety referred to in subsection (2)(a), refuse the application for the recognition of the variety; or*
- (b) in the case of a variety referred to in subsection (2)(b), delete the variety from the varietal list.*
- (7) The registrar may at any time after an investigation in terms of this section has been undertaken, repeat the investigation."*

Amendment of section 24 of Act 53 of 1976, as amended by section 10 of Act 10 of 1979, section 15 of Act 39 of 1983 and section 8 of Act 17 of 1991

19. Section 24 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:

- "(b) provide that any area of land utilized for the cultivation of plants or propagating material in terms of a scheme, shall be registered as a unit with the authority referred to in paragraph (a);*
- (c) provide for the manner in which an application for registration as a unit shall be lodged, the information which shall accompany such an application and the circumstances under which such registration shall lapse, be refused or be cancelled;"*

Insertion of section 24A in Act 53 of 1976

20. The following section is hereby inserted in the principle Act after section 24:

"Inspection for quality control

24A. An officer or authorised person may during business hours enter any premises registered under this Act and-

- (a) open any container found at or on the premises which the officer or authorised person believes on reasonable grounds contains any propagating material;
- (b) examine the propagating material and take samples thereof; and
- (c) require the owner or occupier to produce for inspection, or for the purpose of obtaining copies or extracts, any books, labels, shipping bills, bills of lading or other documents or papers with respect to the administration of this Act."

Substitution of section 25 of Act 53 of 1976, as amended by section 11 of Act 10 of 1979, section 16 of Act 39 of 1983 and section 9 of Act 17 of 1991

21. The following section is hereby substituted for section 25 of the principal Act:

"Power to enter premises, carry out inspections, take samples and seize certain articles

25. *(1) An officer in the department referred to in section 3(3)(a) or authorised person may, on the authority of a warrant issued under subsection (3), at any reasonable time-*

- (a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, prepackaged, marked, labelled, held, kept, packed, removed, transported, exhibited or sold;*
- (b) direct a person in control of or employed at such place, premises or vehicle to-*
 - (i) deliver any book, record or other document that pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person;*
 - (ii) furnish the information he or she has with regard to that plant, propagating material, substance or other article;*
 - (iii) render the assistance the office or authorized person requires to enable him or her to perform his or her functions under this Act;*
- (c) inspect any book, record or other document and make copies thereof or excerpts therefrom;*
- (d) seize any plant, propagating material, substance, book, record or other document or article which is or might be relevant to a prosecution under this Act and keep it in his or her custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under*

the supervision of the officer or authorized person concerned, make copies thereof or excerpts therefrom;

(e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, prepackaging, marking, labelling, holding, keeping, packing, removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph (d), and examine, analyse or classify such samples.

(2) Any sample taken in terms of subsection (1)(e) or (6)–

(a) shall consist of the quantity or mass determined by the registrar, taken in accordance with the methods determined by him or her;

(b) shall be taken in the presence of the person in charge of, or the owner or Custodian of, such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form determined by the registrar shall be completed in respect thereof;

(c) shall, if necessary, be packed and identified in such manner as the nature thereof permits; and

(d) shall with all convenient speed be tested, examined or analysed in accordance with the methods which the registrar may determine or which may be prescribed, and the result of such test, examination or analysis shall be entered on the determined by the registrar form.

(3) A warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the place or premises in question is situated, or where the vehicle is or will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article mentioned in subsection (1)(a) and (b) is upon or in such place, premises or vehicle. and shall specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued.

(4) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant shall be conducted with strict regard to decency and order, including–

(a) a person's right to, respect for and protection of his or her dignity;

(b) the right of a person to freedom and security, and

(c) the right of a person to his or her personal privacy.

(5) The officer or authorized person executing a warrant in terms of this section shall immediately before commencing with the execution–

(a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle,

(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(6) An officer in the department or authorized person may without a warrant enter any place, premises or vehicle, and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so consents to such entry, search, seizure. taking of samples and removal.

(7)(a) The officer or authorized person who may on the authority of a warrant issued in terms of subsection (3), or under the provisions of subsection (6), enter and search any place, premises or vehicle, may use such force as may be reasonably necessary to overcome resistance to such entry or search.

(b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly demanded admission to the place, premises or vehicle and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified.

(8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the Supreme Court which has jurisdiction, or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.

(9) A warrant issued in terms of this section may be issued on any day and shall be of force until—

(a) it is executed: or

(b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or

(c) the expiry of one month from the day of its issue; or

(d) the purpose for which the warrant was issued, no longer exists, whichever may occur first.

(10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in

terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, book, record or other article or document shall be returned to the person from whom it was seized."

Amendment of section 26 of Act 53 of 1976, as amended by section 12 of Act 10 of 1979, section 17 of Act 39 of 1983 and section 10 of Act 17 of 1991

22. Section 26 of the principal Act is hereby amended-

(a) by the deletion of the proviso to paragraph (b) of subsection (1);

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

"(b) A person requiring the permission of the registrar under paragraph (a) shall apply therefor to the registrar in the prescribed manner **and form**."

(c) by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) A person importing a consignment of plants or propagating material shall furnish the registrar with the particulars which the registrar may determine regarding such consignment, and such consignment shall not be removed from a port or place contemplated in subsection 1 **(d)** (a)(iv) unless the registrar has authorized the removal thereof in writing.

(4) **Plant or Plants** and propagating material imported in terms of subsection (1) or (2) shall, if the registrar so requires, be presented for examination and sampling in terms of this section at a port or place contemplated in subsection (1) **(d)** (a)(iv)."; and

(d) by the substitution for subsection (6) of the following subsection:

"(6)(a) The provisions of this section shall not apply with reference to the importation of plants and propagating material intended for –

(a) purposes other than cultivation or

(b) for immediate export **Provided that the**.

(b) The person importing **such** plants or propagating material *in terms of paragraph (a)* shall, prior to or on arrival thereof in the Republic, furnish to the registrar a declaration to that effect in the prescribed **form manner**."

Amendment of section 27 of Act 53 of 1976, as amended by section 11 of Act 17 of 1991

23. Section 27 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) Any person desiring to obtain any such certificate shall apply therefor to the registrar in the prescribed manner ***and in the form determined by the registrar*** and such application shall be accompanied by the prescribed application fee.

(3) After receipt of an application referred to in subsection (2) the registrar may undertake such inspection of the plants and propagating material intended for export as he *or she* may deem necessary, take such samples thereof as he *or she* may deem necessary and test, examine or analyse the samples *or cause the samples to be tested, examined or analysed* in the manner ***referred to in paragraph (c) of section 25(3) contemplated in section 25(2)***, and the person who has thus applied shall pay to the registrar on demand the prescribed fees in connection with such inspection and for the testing, examination or analysis of such samples."

Amendment of section 32 of Act 53 of 1976

24. Section 32 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) The procedure at the hearing of an appeal shall be as ***determined by the chairman prescribed***."

Amendment of section 33 of Act 53 of 1976

25. Section 33 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No person shall publish or distribute or cause or permit to be published or distributed any false or misleading advertisement concerning plants, propagating material or ***any establishment premises***."

Amendment of section 34 of Act 53 of 1976, as amended by section 21 of Act 39 of 1983

26. Section 34 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) The regulations may in respect of any contravention thereof or failure to comply therewith prescribe a penalty ***not exceeding a fine of two hundred rand or imprisonment for a period not exceeding six months-***

(a) in the case of a first conviction, of an appropriate fine or imprisonment for a period not exceeding six months; and

(b) in the case of a second or subsequent conviction, of a fine or imprisonment for a

period not exceeding one year."

Amendment of section 35 of Act 53 of 1976, as amended by section 13 of Act 10 of 1979, section 22 of Act 39 of 1983 and section 13 of Act 17 of 1991

27. Section 35 of the principal Act is hereby amended-

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

"(a) who -

(i) makes a false entry in the varietal list or causes it to be made therein, or who makes a **writing document** or causes a **writing document** to be made which falsely purports to be a copy of **an entry in or excerpt from** the varietal list; or **who**

(ii) produces or tenders or causes to be produced or tendered as evidence any such entry, **or any such copy thereof or excerpt**; or

(iii) *knowing it to be false offers, utters or puts out an entry, a copy or an excerpt referred to in subparagraph (i) to the detriment or potential detriment of another person;*";

(b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the following subparagraph:

"(ii) makes a false statement or representation *or furnishes false information* knowing it to be false; or";

(c) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) who conducts a business in conflict with the provisions of section 6 **or who operates an establishment which does not conform to the requirements referred to in section 9(2)**";

(d) by the substitution for paragraph (i) of subsection (1) of the following paragraph:

"(i) who fails to display or return a certificate of registration of **an establishment premises**";

(e) by the addition to subsection (1) of the following paragraphs:

"(m) who sells, removes or tampers with any plant, propagating material, substance or other article, or any book or document seized in terms of section 25, or who tampers with an identification mark or seal attached thereto in terms of that section;

(n) who falsely holds himself or herself out to be the registrar, an officer referred to in section 3(3)(a) or an authorized person;

(o) who makes a document or causes a document to be made which purports to be a certificate, authorization or other document issued in terms of this Act,";

(f) by the substitution for paragraphs (i) and (ii) of subsection (1) of the following paragraphs, respectively:

(i) in the case of a *first conviction of a contravention referred to in **paragraph (a), (b), (f), (g), (h), (k) or (l)** this subsection*, to a fine **not exceeding R8 000** or to imprisonment for a period not exceeding **two years or to both such fine and such imprisonment; or one year**;

(ii) in the case of a *second or subsequent conviction of a contravention referred to in paragraph (c), (d), (e), (i) or (j)*, to a fine **not exceeding R4 000** or to imprisonment for a period not exceeding **one year or to both such fine and such imprisonment two years; or"**; and

(g) by the addition to subsection (1) of the following paragraph:

"(iii) in the case of a second or subsequent conviction of a contravention referred to in paragraph (a), (b), (f), (g), (h), (k), (l), (m), (n) or (o), to a fine or to imprisonment for a period not exceeding four years."

Amendment of section 36 of Act 53 of 1976, as amended by section 23 of Act 39 of 1983

28. Section 36 of the principal Act is hereby amended-

(a) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

"(aA) any sample taken in terms of section 25(l)(e) shall be deemed to be representative of that plant, propagating material, substance or other article from which it was taken unless the contrary is proved;"

(b) by the deletion of paragraph (b) of subsection (1); and

(c) by the deletion of the word "and" at the end of paragraph (c) of subsection (1) and the addition to the said subsection of the following paragraph:

"(e) an excerpt from or a copy of the varietal list certified as such by the registrar, shall be accepted as prima facie proof of the information contained therein."

Substitution of long title of Act 53 of 1976

29. The following long title is hereby substituted for the long title of the principal Act:

"ACT

To provide for the registration of ***establishments*** premises from which the sale of certain plants or the cleansing, packing and sale of certain propagating material may be undertaken; to prescribe the conditions subject to which such plants or propagating material may be sold for the purposes of cultivation; to provide for the recognition of certain varieties of plants; for a system of certification of plants and propagating material with the object of maintaining the quality of certain plants and propagating material, and ensuring the usefulness of the products thereof for agricultural and industrial purposes; and for the control of the import and export of certain plants and propagating material; and to provide for incidental matters."

Saving

30. Any premises which were registered in terms of the principal Act immediately prior to the commencement of this Act shall be deemed to be registered for the remaining portion of the term of registration thereof as if the principal Act had not been amended by this Act.

Repeal of laws

31. The laws mentioned in the second column of the Schedule are hereby repealed as indicated in the third column of the Schedule, to the extent that such laws were in force immediately prior to the commencement of the Constitution in the various territories of the national territory of the Republic as set out in the fourth column of the Schedule.

Extension of application of Act 53 of 1976

32. The principal Act shall apply throughout the Republic.

Short title

33. This Act shall be called the *Plant Improvement Amendment Act, 1996* .

SCHEDULE

LAWS REPEALED BY SECTION 31

Number and year of Short title – Extent of repeal – Area in respect of law which law is repealed

Act No. 28 of 1961 Seeds Act, 1961 The whole The territory of the former self-governing territory of KwaZulu.

Act No. 53 of 1976 Plant Improvement Act, 1976 The whole. The territories of the former Republics of Bophuthatswana, Venda and Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaNdebele and KaNgwane.

Act No. 10 of 1979 Plant Improvement Act, 1979 Amendment The whole The territory of the former Republic of Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaNdebele and KaNgwane.

Act No. 14 of 1979 Plant Improvement Act, 1979. The whole The territory of the former Republic of Transkei

Act No. 17 of 1980 Plant Improvement Act, 1980 Amendment. The whole The territory of the former Republic of Transkei.

Act No. 16 of 1981 General Law Amendment Act, 1981 Section 13 The territory of the former Republic of Transkei.

Act No. 36 of 1983 Agricultural Pests Act, 1983 Section 20(1) The territories of the former self-Governing territories of Lebowa, Gazankulu, Qwaqwa, KwaNdebele and KaNgwane.

Act No. 39 of 1983 Plant Improvement Act, 1983 Amendment. The whole The territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaNdebele and KaNgwane.