

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
SHERIFFS AMENDMENT BILL**

[B 2—98]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 2A—98]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP
OP BALJU'S**

[W 2—98]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 2A—98]

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AMENDMENTS AGREED TO

SHERIFFS AMENDMENT BILL [B 2—98]

CLAUSE 4

1. On page 4, in line 45, after “sheriffs” to insert:

, each from a different province of the Republic,
2. On page 4, in line 46, to omit “[~~twelve~~] nine” and to substitute “twelve”.
3. On page 4, in lines 46 and 47, to omit “one from each of the provinces of the Republic, as the case may be.”.
4. On page 4, in line 51, after “persons” to insert:

, one of whom must be nominated by the attorneys’ profession,
5. On page 6, after line 19, to add:

(d) by the substitution for subsection (4) of the following subsection:
 “(4) (a) The Minister shall designate one of the members of the Board as the chairperson of the Board.
 (b) The Board shall elect a deputy chairperson from among its members and the deputy chairperson shall hold office for such period as the Board may determine at the time of his or her election.”; and
 (e) by the substitution for subsection (5) of the following subsection:
 “(5) The [~~vice-chairman~~] deputy chairperson may, if the [~~chairman~~] chairperson is absent or for any reason unable to act as [~~chairman~~] chairperson, perform the functions of the [~~chairman~~] chairperson.”.

CLAUSE 6

1. On page 6, in line 40, after “may” to insert:

, subject to the approval of the Board,

NEW CLAUSE

1. That the following be a new Clause to follow Clause 9:

Amendment of section 32 of Act 90 of 1986

10. Section 32 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding the provisions of subsection (2), the Board may at any time issue to an acting sheriff a fidelity fund certificate having a period of validity of not less than one month and not more than [~~six months~~] one year.”.

CLAUSE 11

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 43 of Act 90 of 1986

12. Section 43 of the principal Act is hereby amended—

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

“(g) he or she commits an offence in terms of this Act, or any other offence in respect of which violence, dishonesty, extortion or intimidation is an element;”;

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

“(h) he or she makes use of fraudulent or misleading representations, including—

- (i) the simulation of legal procedures;
- (ii) the use of simulated official or legal documents;
- (iii) representation as a police officer; or
- (iv) the making of unjustified threats to enforce rights; or

(i) he or she fails to comply with any regulation pertaining to the service of process.”.

Substitution of section 45 of Act 90 of 1986

13. The following section is hereby substituted for section 45 of the principal Act:

“Charge of improper conduct

45. (1) [When a sheriff is accused of improper conduct the Board may charge him in writing with that improper conduct.] The Board may, on its own initiative or upon the lodging of a complaint, accusation or allegation referred to in section 44(1), charge a sheriff by a notice in writing with improper conduct.

(2)(a) A [charge of improper conduct] notice referred to in subsection (1) shall be served upon a sheriff in the prescribed manner, and [the charge] shall contain or be accompanied by a request that the sheriff furnishes the Board with a written admission or denial of the charge and, if the sheriff so prefers, a written explanation in connection with the charge within 14 days of the [serving] service thereof.

(b) The Board may, if it believes that on conviction of the sheriff a fine not exceeding the prescribed amount will be imposed upon him or her, afford the sheriff an opportunity to admit his or her guilt in respect of the charge and to pay the fine determined by the Board in the said notice on or before the date specified in the notice without appearing before the Board.

(c) Any sheriff who wishes to pay an admission of guilt fine referred to in paragraph (b), must—

- (i) pay the fine in the prescribed manner before the date specified in the notice; and
- (ii) surrender the notice at the time and place of payment of the fine.

(d) The Board shall keep a register in the prescribed form of all fines paid in terms of this subsection, and a copy of the register shall be included in the reports referred to in section 59.

(3) The Minister may at any time withdraw a charge of improper conduct.”.

Substitution of section 46 of Act 90 of 1986

14. The following section is hereby substituted for section 46 of the principal Act:

“Inquiry into improper conduct

46. The Board shall, unless an admission of guilt fine has been determined and paid in terms of section 45(2), inquire into a charge of improper conduct at such time and place as the Board may determine and shall in the prescribed manner give the sheriff charged at least 14 days’ notice in writing of the time and place so determined.”.

CLAUSE 15

1. On page 12, in line 26, after “sheriff” to insert “or any other specified functionary”.
2. On page 12, in line 30, to omit all the words from “Provided” up to and including “her” in line 33.
3. On page 12, from line 34, to omit paragraph (b) and to substitute:

(b) by the insertion after subsection (1) of the following subsection:

“(1A) Any sheriff or deputy sheriff who—

- (a) makes a false return in respect of the service or execution of any process;
- (b) embezzles, or fraudulently conceals or destroys any process; or
- (c) in respect of the property offered for sale at a sale in execution in terms of any rules of court, makes an arrangement with any person to buy such property, or to buy and dispose of such property—
 - (i) on behalf of the sheriff; or
 - (ii) in a manner which results in an improper personal gain for the sheriff; or
 - (iii) in a manner which will restrict or is likely to restrict the proceeds of such sale,

shall be guilty of an offence.”; and

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

“(2) Any person who is convicted of an offence under this Act shall be liable—

- (a) in the case of an offence referred to in paragraph (a), (c), (d), (h) or (i) of subsection (1), to a fine **[not exceeding R2 000,]** or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment; **[and]**

(b) in the case of an offence referred to in paragraph (b), (e), (f) or (g) of subsection (1), to a fine **[not exceeding R1 000,]** or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment; and

(c) in the case of an offence referred to in paragraph (gA) of subsection (1), or in subsection (1A), to a fine or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.”.

CLAUSE 17

1. On page 14, in line 1, after “3(2)(b)” to insert:
 , including measures aimed at co-ordinating the functions performed by such sheriffs

CLAUSE 18

1. On page 14, in line 8, to omit “vice-chairperson” and to substitute “deputy chairperson”.

CLAUSE 21

1. On page 16, after line 18, to add:
 (5) Notwithstanding section 11 of the principal Act, the terms of office of the members of the Board as it existed immediately prior to the commencement of this Act, shall expire upon the commencement of this Act, and the Minister may at any time after the passing of this Act, appoint the members of the Board in terms of section 9 of the principal Act, as amended by section 4 of this Act.

LONG TITLE

1. On page 2, in the eleventh line, after “accounts;” to insert:
 to further regulate the issuing of fidelity fund certificates to acting sheriffs;
2. On page 2, in the thirteenth line, to omit all the words after the first “to” up to and including “such” in the fifteenth line and to substitute “create certain offences”.