

~~16.~~ NATIVE LAWS AMENDMENT ACT NO. 36, 1944.

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(21)

This Act was promulgated in Union Gazette Extraordinary No. 3353 dated the 8th June, 1944.

The following is a summary of its provisions :-

Clause 1:

Definition: The expression "Principal Act" means the Natives (Urban Areas) Act as amended from time to time.

Clause 2:

Clause 2 inserts a new section, section 4 quater, in the principal act. It prohibits, except when the Minister after consulting the local authority has given his consent, the acquisition by any non-Native from a native of land or any interest in land situated in areas approved by the Minister for the residence of Natives in terms of Section 5(2)(h) or in areas which in the Minister's opinion are predominantly occupied by natives.

These provisions shall not apply in respect of a mortgage bond over land the terms and conditions of which conform substantially to and are not more onerous to the mortgagor than those of a specimen mortgage bond which the Minister is required to publish in the Gazette for the purposes of this section as soon as practicable. The Minister may in like manner from time to time modify the terms and conditions of such specimen bond but without affecting the terms and conditions of any existing mortgage bond. In terms of the new section 4 quater and the new definition of "interest" added by clause 17 below no non-native shall, except with the approval of the Minister given after consulting the urban local authority, enter into an agreement or transaction for the purchase, exchange, donation or hire from a native of any land in an area approved in terms of section 5(2)(h) or in an area which in the Minister's opinion is predominantly occupied by natives, or for the purchase, exchange, donation or hire of any right under a lease or a servitude or a charge over the said land.

Section 4 bis of the principal act prohibits the acquisition of land in an urban area by a Native from a non-native and the object of clause 2 is to impose similar restrictions on non-natives acquiring land occupied by natives.

Clause 3:

Clause 3 of the Act extends the scope of section 5 ter of the principal act. Section 5 ter provides that any person who introduces natives into an urban area the local authority of which has been required by the Governor-General to enforce the registration of native service contracts in terms of Section 12(1)(a) shall be obliged to give security for the repatriation of such native after the expiry of his term of service. Clause 3 extends this provision to all urban areas where the registration of native service contracts in terms of Section 12(1)(a) is in force, irrespective of whether they have been required by the Governor-General to do so or not. Where the local authority exercises the powers under Section 12(1)(a) no person shall introduce a native to seek or take up employment without the written permission of the assigned officer.

Clause 4:

Clause 4 amends Section 6 of the principal Act. Section 6 prohibits subject to certain exceptions the residence or congregation of natives on land within 5 miles of an urban boundary unless such natives are in the employ of the owner, lessee or occupier of such land.

Clause 4 exempts from the provision of this section any area under the control of a body which, though not an

"urban local authority" as defined by Section 29 of the principal act, or a local authority established by regulation under section 30 of the Native Administration Act 38 of 1927, has been designated as such for the purpose of the Urban Areas Act in terms of clause 19. (Clause 19, dealt with below empowers the Governor-General to designate local authorities that do not fall within such definition as urban local authorities for the purpose of the Act.)

Furthermore, clause 4 provides that on a charge against an owner, lessee or occupier of land of contravening Section 6 the onus of proof that a native residing on land to which the section applies, is in the bona fide employ of the owner, lessee or occupier shall be placed on the accused.

Clause 5:

Clause 5 of the Act amends Section 8 of the principal act.

Section 8 constitutes and regulates the Native Revenue Account of a local authority. It provides that all moneys derived from sources of revenue arising from within a location must be paid into the Native Revenue Account, and these include inter alia fines imposed for contraventions of location regulations, pass and registration fees collected by the local authority, moneys derived from the sale of kaffir beer, rentals received in respect of houses and trading sites, etc.

Expenditure from the Native Revenue Account is limited to services rendered by the local authority to the location or to services which may be certified in writing by the Minister to be for the benefit or the welfare of the native residents of the urban area as a whole.

Clause 5 amends section 8 in such a way that it will provide for the opening of a sub-account separate from the Native Revenue Account called a Kaffir Beer Account, and for the proceeds of the sale of kaffir beer and licence fees and other charges referred to in Section 23(2)(d) bis to be paid into this Kaffir Beer Account.

Expenditure from this Kaffir Beer Account is to be limited to the manufacture, sale and supply of kaffir beer and to any service which the Minister may in writing certify as being calculated to improve the social or recreational amenities available for the native residents within the urban area or otherwise to promote the social welfare of such residents.

Clause 5(4) amends sub-section 4 of Section 8 of the principal act so that the appropriation of moneys from the Native Revenue Account, including the Beer Hall Account, will only take place in accordance with estimates of expenditure which have been adopted by the local authority after consultation with and consideration of a report by the Native Advisory Board.

The Department of Justice ruled that where the S.A. Police, as opposed to officers of the local authorities prosecute natives for beer offences, the charge should be laid under the Liquor Act and all fines for convictions for contravening the Liquor Act accrue to consolidated revenue and not to the Native Revenue Account.

The additions to Section 8(9) of the principal act, made by clause 5(5) of the Act will reverse the position, and in effect it will mean that all fines and forfeitures in respect of prosecutions for Kaffir Beer and concoctions such as Skokiaan, Honey Beer, etc., if the contravention occurred within an urban area and was in the case of Skokiaan, Honey Beer, etc., committed by a Native will be paid into the Native Revenue Account of that area.

Clause 6:

Clause 6 of the Act amends Section 10 of the principal act which deals with the functions of Native Advisory Boards. It lays down more precisely what those functions are to be, viz., to consider and to report to the Minister or to the local authority, as the case may be, any matter specially affecting the interests of the natives in the urban area, any matter referred to it by the Minister or the urban local authority or any regulations contemplated by the local authority. No new regulation made or adopted by the local authority shall be approved by the Administrator or by the Minister unless it has been considered by the Advisory Board copies of whose report shall be transmitted to the Administrator and to the Minister before such approval is given. A board may also recommend to the urban local authority any regulations it considers necessary or desirable.

Clause 7:

Clause 7 amends Section 12 of the principal act and empowers the Governor-General to authorise a local authority to register service contracts outside the area falling within the jurisdiction of such local authority. Section 12 contains far-reaching powers for the control and regulation of native labour in mining and industrial areas. These powers are exercisable in "proclaimed areas" defined by the Governor-General and may be administered either by the Governor-General or he may require a local authority to do so within so much of the proclaimed area as falls within its jurisdiction. This clause proposes to remove the limitation that a local authority may only be required to exercise these powers within so much of a given proclaimed area as falls within its jurisdiction, e.g. its jurisdiction is to be extended to cover any area proclaimed by the Governor-General. The object is to confer the powers under Section 12 of the principal act upon a single local authority in respect of the given proclaimed industrial area, even if such area may in fact fall for local Government purposes under the jurisdiction of other local authorities.

Clause 8:

Clause 8 amends Section 17 of the principal act, which provides for the detention or expulsion of idle, dissolute or disorderly natives from urban areas. The amendment makes provision for the further removal from the urban area of a native who has been previously expelled and returns thereafter.

Clause 9:

Clause 9 clarifies Section 18 of the principal act, which prohibits, without the Minister's consent, the employment by any person of more than 50 natives unless they reside in a location or in other types of accommodation approved by the local authority.

Clause 10:

Section 20 of the principal act provides that native householders shall have the right to brew kaffir beer in a location or native village, only where the municipal system under section 21 or the licence system under section 21 bis is not in force. Clause 10 empowers the Minister to authorise the home brewing of kaffir beer even where the municipal and licence systems are in force and even outside native locations and villages. So far as native householders residing outside a location or native village are concerned it may be decided to issue written permits in approved cases. Where such permits have been issued in an urban area in which the brewing is lawful in terms of sub-section (1) of section 20 these permits lapse if the Minister issues a notice under sub-section (2) of section 20 or under section 20 or 21 bis.

Clause 11:

Clause 11 amends Section 21 of the principal act so as to confer upon the Minister the power to control the design, dimensions and situation of beer halls erected by local authorities in terms of the principal act.

Clause 12:

Section 21 bis empowers the Minister to authorise a local authority to issue licences to individual natives to brew and sell kaffir beer in native locations and native villages.

Clause 12 provides for an amendment which will permit the licence to be issued in respect of any place within the urban area. The coloured person in sub-section 6(a) of section 21 bis to whom kaffir beer may be sold must be bona fide resident in a location or native village within the urban area.

Clause 13:

Clause 13 amends Section 22 of the principal act to provide for all trading sites in a location or a native village to be subject to regulations framed under Section 23(3) of the principal act, whereas they are now subject to conditions laid down by the Minister. The Minister may authorise the urban local authority to carry on business as a general dealer, butcher, baker and eating house keeper, or to establish and conduct markets. The last six words are added by Clause 13.

Clause 14:

Clause 14 amends Section 23 of the principal act, which confers on the Governor-General, the Minister and local authorities the power to frame regulations, as follows :-

- (1) The Minister's power under Section 23(2)(d) ter to make regulations governing the brewing and possession of kaffir beer in locations and native villages where domestic brewing under Section 20 is lawful, is extended to cover the whole urban area. In the case of a location or native village the conditions may include the issue of permits and the prohibiting for a period not exceeding 60 days at a time, the brewing by a native convicted of supplying or being in unlawful possession of intoxicating liquor or kaffir beer.
- (2) A local authority's power to regulate the supply, possession, etc., of sprouted grain under Section 23(3)(j) is extended to include such grain when crushed or ground sprouted, "Urban area" is substituted for "location or native village" in the proviso to Section 23(3)(j).
- (3) A new paragraph "u" is added to Section 23(3). This includes a power to make regulations for the "management, control and good government" of areas approved by the Minister for the residence of Natives in terms of the Principal Act, Section 5(2)(h) (referred to above). Under Section 23(3)(b) a local authority already has power to make regulations for "the management and control" of locations, Native villages, hostels, accommodation that employers have been required to provide under Section 1(1)(e) and premises licensed for the occupation of Natives under Section 5(4). This paragraph thus extends the local authority's regulatory power to the only other type of lawful Native residence in an urban area. The proposed new provision also vests in the local authority power to stipulate the conditions that may or shall be embodied in title deeds or leases of lots or premises situate in areas approved under Section 5(2)(h),

Clause/....

Clause 15:

Clause 15 amends Section 24 of the principal act, in such a way that when two or more local authorities co-operate in carrying out any of the provisions of the act, the Minister may determine the apportioning of the expenditure thus incurred and the revenue thus derived by them.

Clause 16:

Clause 16 re-drafts Section 26(g) of the principal act, which excludes from the operation of the act compounds established for the accommodation of native labourers employed on mines, works or machinery as defined by the Mines and Works Act, 1911, as amended, or any other accommodation for natives in any industry that the Minister may exclude from the Act. Nothing new is added by the clause.

Clause 17:

Clause 17 inserts in Section 29 of the principal act the following new definition:

"interest" in relation to land, includes, in addition to other interests in land, any right under a lease or a mortgage of, or a servitude or a charge over, land.

In terms of this new definition a non-native is prohibited under Section four of the principal act from entering into an agreement or transaction for the purchase, exchange, donation or hire not only of a lot situate in a native village or location but also of any right under a lease or a mortgage of, or a servitude or a charge over, the said lot. Furthermore, a native must under Section 4 bis of the principal act obtain the Governor-General's approval to an agreement or transaction for the purchase, exchange, donation or hire from any person other than a native not only of land situated within an urban area but also of any right under a lease or a mortgage of, or a servitude or a charge over the said land.

Clause 18:

A local authority has the power to make regulations for the control of sprouted grain within the area under its jurisdiction but not in respect of land outside its boundaries. This has led to abuses, and clause 18 is to meet the situation. It empowers the Minister, on request of the local authority, to prohibit the sale of sprouted grain or crushed or ground sprouted grain to a native without a permit from the local authority in areas within 5 miles of the municipal boundary. On refusal or withdrawal of a permit by the local authority an appeal shall lie to the Minister.

Natives on private land will be able to purchase or possess sprouted grain only with the written permission of the owner or occupier of that land.

Clause 19:

Clause 19 confers upon the Governor-General the power to designate by proclamation any body established for the purpose of local government but which is not a local authority as defined in section 29 of the principal act, as an "urban local authority" or a local authority established by regulation under Section 30 of the Native Administration Act, 1927, for the purpose of carrying out within its area of jurisdiction such provisions of the principal act, as amended, as may be specified in the proclamation.

Under this provision it is possible for the Governor-General to confer the powers of the principal act on peri-urban or purely rural local authorities, such as the Local Health Commission in Natal or the Peri-Urban Health Board in Transvaal.

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Note.

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