



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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### Government Notice

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#### OFFICE OF THE PRIME MINISTER

No. 273 2004

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 17 of 2004: Motor Vehicle Theft Amendment Act, 2004.

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## EXPLANATORY NOTE:

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[ ] Words in bold type in square brackets indicate omissions from existing provisions.

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**ACT**

To **amend the Motor Vehicle Theft Act, 1999, so as to redefine certain expressions; to criminalise the tampering with motor vehicles and motor vehicle parts; to prohibit the issue of clearance certificates in certain circumstances; to prescribe minimum sentences for certain offences relating to motor vehicles and motor vehicle parts; to provide anew for the jurisdiction of magistrates' courts; and to provide for matters incidental thereto.**

*(Signed by the President on 1 December 2004)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows: -

**Amendment of section 1 of Act No. 12 of 1999**

1. Section 1 of the Motor Vehicle Theft Act, 1999 (hereinafter referred to as the principal Act), is amended -

- (a) by the substitution for the definition of "identification mark" of the following definition:

"'identification mark' means any mark (other than a registration mark) made or placed, for the purpose of identification, on a motor vehicle in such a manner as to be as far as possible indelible, and includes -

- (a) any mark which is cast, engraved, etched or printed; or  
(b) any identification plate or secret number which is affixed by a manufacturer or owner,

onto a motor vehicle for that purpose;";

- (b) by the substitution for the definition of "motor vehicle part" of the following definition:

"'motor vehicle part' means any one of the several units of which a motor vehicle is composed of as a whole, and includes the engine and chassis thereof and any accessories ordinarily used therewith;";

- (c) by the substitution for the definition of "possession" of the following definition:

"'possession' includes having in custody or under control;"; and

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

"'tamper', in relation to any engine number, chassis number, registration number, registration mark or identification mark, includes to add anything to or to remove anything from any such number or mark, or to reconstruct a new number or mark therefrom;";

**Substitution of section 2 of Act No. 12 of 1999**

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

**“Failure to give satisfactory account of possession of or tampering with motor vehicle or motor vehicle part**

2. Any person who is found in possession of -

- (a) a motor vehicle in regard to which there is reasonable suspicion that -
- (i) such motor vehicle has been stolen; or
  - (ii) the engine number, chassis number, registration number or registration mark of, or any identification mark on, such motor vehicle has been tampered with; or
- (b) a motor vehicle part in regard to which there is reasonable suspicion that -
- (i) such motor vehicle part has been stolen; or
  - (ii) the number of, or any identification mark on, such motor vehicle part has been tampered with,

and who is unable to give satisfactory account of such possession or tampering, shall be guilty of an offence.”.

**Amendment of section 6 of Act No. 12 of 1999**

3. Section 6 of the principal Act is amended by the insertion after subsection (3) of the following subsection:

“(3A) No clearance certificate shall be issued in terms of subsection (3) in respect of a motor vehicle which, at the time when presented in terms of that subsection to a member of the police for verification, is found to be stolen or the engine number, chassis number, registration number or registration mark or any identification mark of which is then found to be tampered with.”.

**Amendment of section 8 of Act No.12 of 1999**

4. Section 8 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary in any other law contained, but without derogating from any power conferred by section 14(4) and (5) of the Police Act, any member of the police may, in the performance of the functions referred to in section 13 of that Act, whenever such member has reasonable grounds for believing that any person is driving or is in possession or control of a motor vehicle which has been stolen or the engine number, chassis number, registration number or registration mark or any identification mark of which has been tampered with, and where delay in obtaining a warrant to search such motor vehicle or to enter any premises for the purpose of searching such motor vehicle carries with it the danger of prejudicing the objects of the search, and if -

- (a) such search is related to the objectives of this Act;
- (b) such search is not excessively intrusive in the light of the offence;

and

- (c) such person is informed of the objectives of the search,

without warrant -

- (i) search such motor vehicle or, if such motor vehicle is on or in any premises, enter such premises for the purpose of searching such motor vehicle; and
- (ii) arrest any person found driving or in possession or control of such motor vehicle and seize such motor vehicle,

and shall as soon as possible bring or remove such person and the motor vehicle so seized to a police station or charge office, as the case may be.”.

**Amendment of section 9 of Act No.12 of 1999**

5. Section 9 of the principal Act is amended by the substitution for subsection (10) of the following subsection:

“(10) Any person who, having been duly served with an order under paragraph (b) or (c) of subsection (1), fails to comply with any provision of that order, shall be guilty of an offence.”.

**Amendment of section 13 of Act No. 12 of 1999**

6. Section 13 of the principal Act is amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) contravening section 2(a)(i) or (b)(i) or 3(1).”.

**Amendment of section 15 of Act No.12 of 1999**

7. Section 15 of the principal Act is amended -

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

“(1) Any person who is convicted of an offence under this Act shall, subject to the provisions of subsections (2), (4) and (5), be liable -

- (a) in the case of an offence referred to in section 5, 6(1) or (4), 7, 8(6), 9(10) or 11(1), to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (b) in the case of an offence referred to in section 2(b), to a fine not exceeding N\$40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment;
- (c) in the case of an offence referred to in section 2(a), notwithstanding anything to the contrary in any other law contained -
- (i) on a first conviction, to imprisonment for a period of not less than ten years without the option of a fine;

- (ii) on a second or subsequent conviction, to imprisonment for a period of not less than fifteen years without the option of a fine:

Provided that, where for the purpose of or in connection with the commission of such offence violence or a threat of violence is used, the penalty on any conviction shall be -

- (aa) where such violence or threat of violence does not involve a firearm or other dangerous weapon, imprisonment for a period of not less than twenty years without the option of a fine;
- (bb) where such violence or threat of violence involves a firearm or other dangerous weapon, imprisonment for a period of not less than thirty years without the option of a fine;
- (d) in the case of an offence referred to in section 3(1), to imprisonment for a period of not less than ten years without the option of a fine;
- (e) in the case of an offence referred to in section 4, to imprisonment for a period of not less than fifteen years without the option of a fine.”; and

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

“(2) If a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in paragraph (c), (d) or (e) of subsection (1), it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.”.

#### **Substitution of section 23 of Act No. 12 of 1999**

8. The following section is substituted for section 23 of the principal Act:

#### **“Jurisdiction of magistrates’ courts**

23. Notwithstanding anything to the contrary in any other law contained -

- (a) a magistrate’s court of a regional division shall have jurisdiction to impose any penalty or additional penalty provided for in this Act, even though that penalty may, either alone or together with any additional penalty imposed by that court, exceed the punitive jurisdiction of that court; and
- (b) a magistrate’s court of a district or a regional division shall have jurisdiction to make any order under section 18 irrespective of the amount payable under that order.”.

#### **Short title**

9. This Act is called the Motor Vehicle Theft Amendment Act, 2004.
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