

MPUMALANGA WITCHCRAFT PROTECTION BILL 2007

Draft Note:

This draft **Mpumalanga Witchcraft Protection Bill** has been prepared by the South African Pagan Rights Alliance in collaboration with the South African Pagan Council for consideration by the Office of the Premier: Mpumalanga, as a preferred alternative and replacement to the proposed Mpumalanga Witchcraft Suppression Bill (2007).

Note: This draft Bill has been modeled on the Promotion of Equality and Prevention of Unfair Discrimination Act (Act No. 4 of 2000) and has included appropriate provisions from Act 4 of 2000 in order to give effect to the aims and objectives envisaged in Chapter 2 of the Constitution of the Republic of South Africa (Act 108 of 1996) with respect to the enactment of legislation to prevent and prohibit unfair discrimination and to advance persons and categories of persons disadvantaged by unfair discrimination, as reflected in the preamble of this proposed 'Mpumalanga Witchcraft Protection Act'.

Proposed draft

MPUMALANGA WITCHCRAFT PROTECTION BILL 2007

To provide for the protection of self-defined Witches in the province, to protect Witchcraft as a recognised religious minority, and to prohibit discrimination against persons claiming to be Witches, or alleged to be Witches, or of practicing Witchcraft.

PREAMBLE

Chapter 2 of the Constitution of the Republic of South Africa (Act 108 of 1996) recognises and enshrines human dignity, the achievement of equality and the advancement of human rights and freedoms.

Section 9 (2) and (4) of the Bill of Rights provides for the enactment of legislation to prevent or prohibit unfair discrimination, to protect and advance persons or categories of persons disadvantaged by unfair discrimination, and to promote the achievement of equality for a specific historically disadvantaged religious minority.

Be it therefore enacted by the Provincial Legislature of the Province of Mpumalanga as follows:

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CHAPTER 1

DEFINITIONS, OBJECTS AND INTERPRETATION

1.1. Definitions

“Constitution” means the Constitution of the Republic of South Africa. (Act No. 108 of 1996)

“discrimination” means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly,

- (a) imposes burdens, obligations or disadvantage on; or
- (b) withholds benefits, opportunities or advantages from any person.

“equality” includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution.

“harassment” means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences.

“Witchcraft” means,

- (a) the practice of divinations and natural sympathetic magic, whether through the agency of natural or supernatural means, and
- (b) a religious Pagan spirituality.

“Witch” means a practitioner of Witchcraft as defined above.

1.2. Objects of this Act

The objects of this Act are:

1. to enact legislation required by section 9 of the Constitution;
2. to give effect to the letter and spirit of the Constitution, in particular,
 - (a) the equal enjoyment of all rights and freedoms by all persons;
 - (b) the promotion of equality with respect to a specific religious minority;
 - (c) the promotion of the values of religious equality and human dignity enshrined in the Constitution;
 - (d) the prevention of unfair discrimination and protection of human dignity as contemplated in the Constitution;
 - (e) the prohibition of advocacy of hatred based on religion, that constitutes incitement to cause harm;
 - (f) to provide for a legislative measure to facilitate the eradication of unfair discrimination, hate speech and harassment on the grounds of religion and belief.

1.3. Interpretation of this Act

1. Any person applying this Act must interpret its provisions to give effect to the Constitution, provisions which include,
 - (a). the promotion of equality through legislative and other measures designed to protect or advance persons disadvantaged by past and present unfair discrimination; and
 - (b). the objects and guiding principles of this Act as set forth in the Preamble to this Act.

CHAPTER 2

PREVENTION AND PROHIBITION OF UNFAIR DISCRIMINATION

2.1. Prevention and prohibition of unfair discrimination

1. Neither the State nor any person may unfairly discriminate against any person on the grounds that such person,

- (a) is or professes to be a Witch,
- (b) does practice or professes to practice Witchcraft,
- (c) does practice or professes to practice divinations, or
- (d) does practice or professes to practice magic.

2.2. Prohibition of false allegation, hate speech, harassment and acts of violence

1. Prohibition of false allegation and hate speech

(a). No person may falsely accuse another of being a Witch or of using Witchcraft to bewitch another.

(b). No person may publish, propagate, advocate or communicate words against any person on the grounds that such person is a Witch or is practicing Witchcraft, that could be construed to demonstrate a clear intention to,

- (i) be harmful or to incite harm, or
- (ii) promote discrimination or propagate hatred.

2. Prohibition of harassment and acts of violence

(a). No person may subject any person to harassment or acts of violence on the grounds that such person is alleged to be a Witch or accused of practicing Witchcraft.

(b) No person may subject any person to harassment or acts of violence on the grounds that such person claims to be a Witch or to be practicing Witchcraft.

2.3. Prohibition of dissemination and publication of information intended to unfairly discriminate

1. No person may disseminate or broadcast any information, or publish or display any advertisement or notice, that could reasonably be construed, or reasonably be understood to demonstrate a clear intention to unfairly discriminate against, or deliberately misrepresent any person claiming to be a Witch, provided that,

- (a) bona fide engagement in artistic creativity, academic and scientific inquiry,
- (b) fair and accurate reporting in the public interest,
- (c) publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

CHAPTER 3

PROMOTION OF EQUALITY

3.1. General responsibility to promote equality

All persons have a duty and responsibility to promote equality.

3.2. Duty of the State to promote equality

1. The State has a duty and responsibility to promote and achieve equality through,

- (a). the elimination of any and all forms of unfair discrimination,
- (b). the prevention of the perpetuation of inequality in any law, policy or practice.

2. The State must, where necessary, with the assistance of relevant constitutional institutions,

- (a) develop awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equality,
- (b) take measures to develop and promote equality, and
- (c) where necessary or appropriate, develop measures to address unfair discrimination, hate speech and harassment against alleged or actual Witches in such a way that does not infringe on the right of self-defined Witches or practitioners of Witchcraft to practice their religion freely.

3.3. Duty of all persons to promote equality

All persons, including non-governmental organisations, community-based organisations and traditional institutions must promote religious equality and respect for human dignity.

SHORT TITLE AND COMMENCEMENT

This Act is called The Mpumalanga Witchcraft Protection Act and comes into operation on a date fixed by the Premier by proclamation in the Provincial Gazette.