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G E N E R A L N O T I C E
A L G E M E N E K E N N I S G E W I N G

NOTICE 4562 OF 2000

DEPARTMENT OF TRADE AND INDUSTRY

**CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) AMENDMENT
BILL, 2000**

The above-mentioned Bill is hereby published for comment.

Interested persons are invited to furnish written comment and representations before or on 20 December 2000 to:

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KENNISGEWING 4562 VAN 2000

DEPARTEMENT VAN HANDEL EN NYWERHEID

**WYSIGINGSWETSONTWERP OP VERBRUIKERSAKE (ONBILLIKE
SAKEPRAKTYKE), 2000**

Die bogenoemde wetsontwerp word hierrnee vir kommentaar gepubliseer.

Belanghebbende persone word versoek om voor of op 20 Desember 2000 hul skriftelike kommentaar en verhoë te verskaf aan:

Me Lana van Zyl
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GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Consumer Affairs (Unfair Business Practices) Act, 1988, so as to provide for cross examination of an expert by a specific person appointed by the chairperson of the committee; to provide for the Minister to approach a court of law for interim measures; to authorise the Minister to apply to the court to liquidate a business or sequester a person; to expand the powers of the curator; to provide for delegation power; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 71 of 1988, as substituted by section 2 of Act 64 of 1991 and amended by section 4 of Act 33 of 1993 and section 1 of Act 23 of 1999

1. Section 1 of the Consumer Affairs (Unfair Business Practices) Act, 1988 (herein after referred to as the principal Act), is hereby amended -

(a) by the insertion after the definition of “consumer” of the following definitions:

‘Department’ means the Department of Trade and Industry;’

“’Deputy Minister’ means the Deputy Minister of Trade and Industry;

" 'expert' means a person known as or deemed to be an authority on a subject under investigation;"

- (b) by the insertion before the definition of "this Act" of the following definition:
" 'specific person' means a person experienced in cross-examining witnesses. "

Amendment of section 5 of Act 71 of 1988, as amended by section 3 of Act 64 of 1991

2. Section 5 of the principal Act is hereby amended by the insertion after paragraph (b) of subsection (1) of the following paragraph:

"(c) The chairperson of the committee may appoint a specific person to hear oral evidence of an expert and make findings on the credibility of the evidence, provided such evidence is given under oath or affirmation administered by the chairperson."

Amendment of section 8 of Act 71 of 1988

3. Section 8 of the principal Act is hereby amended by the substitution for subsections 5 to 7 of the following subsections:

"(5) Where prior to any investigation or report by the committee, the Minister has reason to suspect that an unfair business practice exists or may come into existence, he or she may apply to court for an order that the unfair business practice be prohibited pending the final outcome of an investigation by the committee and the decision by the Minister to prohibit such practice.

(6) The court issuing such an order will have the power to issue such orders as it may deem appropriate in order to protect the interest of consumers, including the power to appoint a *curator bonis* and to authorize him or her to take possession of the business in question and/or assets thereof.

(7) If the court has appointed a *curator bonis* -

(a) the court may appoint the *curator bonis* to do, subject to its directions, any one or more of the following on behalf of the business against whom the court order has been made, namely -

(i) to perform any particular act in respect of any of or all the property, meaning money or any other movable, immovable, corporeal or incorporeal thing including any rights, privileges, claims and securities and any interest

therein and all proceeds thereof, of the business against whom the court order has been made;

(ii) to take care of the said property;

(iii) to administer the said property; and

(iv) where the said property is a business or undertaking, to carry on, with due regard to any law which may be applicable to the business or undertaking;

(b) order the business against whom the court order has been made to surrender forthwith, or within such period as that court may determine, any property in respect of which a *curator bonis* has been appointed under paragraph (a), into the custody of that *curator bonis*.

(c) Any person affected by an order contemplated 'in sub-paragraph (b) may at any time apply -

(i) for the variation or rescission of the order; or

(ii) for the variation of the terms of the appointment of the *curator bonis* concerned or for the discharge of that *curator bonis*.

(d) Any court which made an order contemplated in sub-paragraph (b) -

(i) may at any time-

(aa) vary or rescind the order; or

(bb) vary the terms of the appointment of the *curator bonis* concerned or discharge that *curator bonis*;

(ii) shall rescind the order and discharge the *curator bonis* concerned if the relevant court order is rescinded;

(iii) may make such order relating to the fees of the *curator bonis*-

(aa) from the confiscated proceeds if a confiscation order is made; or

(bb) by the State if no confiscation order is made."

Amendment of section 12 of Act 71 of 1988

4. Section 12 of the principal Act is hereby amended by the substitution for paragraph (i) of subsection 2 of the following paragraph:

"(i) A curator shall act in the best interest of the clients, debtors and creditors of the person placed under curatorship and the curator shall for this reason be entitled to the assistance of an attorney or advocate in interrogating any person summonsed and his legal representative shall be entitled to cross-examine such person,"

Insertion of section 21 in Act 71 of 1988

5. The following section is hereby inserted in the principal Act after section 20:

Delegation

21. The Minister may delegate any or all the powers vested in him or her under this Act to the Deputy Minister or an official of the Department, provided that the Minister retains the power of veto. ”

Short title

6. This Bill shall be called the Consumer Affairs (Unfair Business Practices) Amendment Bill, 2000

**MEMORANDUM ON THE OBJECTS OF THE
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) AMENDMENT
BILL, 2000**

The purpose of the Bill is to define the words “expert” and “specific person”. It often happens that persons / organisations under investigation submit information provided by “an expert”. It has become necessary to allow the chairperson of the Committee to appoint a specific person that is experienced in cross-examining expert witnesses to deal with such cases.

The Bill also enables the Minister, prior to any investigation or report by the committee, where he or she has reason to suspect that an unfair business practice exists or may come into existence, that he or she may apply to court for an order that the unfair business practice be prohibited pending the final outcome of an investigation by the committee and the decision by the Minister to prohibit such practice. This amendment is necessary to bring the Act in line with the Constitution of the Republic of South Africa.

The Constitutional Court on 29 September 2000, found section 8(5) of the Consumer Affairs (*Unfair Business Practices*) Act, empowering the Minister, on the recommendation of the Consumer Affairs Committee, to stay or prevent any unfair business practice under investigation and to attach money or property related to an investigation, to be unconstitutional. The reason given by the Court for the invalidity of the provision is that while it confers a wide discretion on the Minister, the provision does not provide guidance as to the exercise of those powers nor does it suggest any administrative procedures to be followed in exercising them. The Court found that the provision infringes the right to just administrative action and cannot be justified. The Court, however, also determined that it would not be in the public interest simply to strike down the provision and thus allow persons who are under investigation for unfair business practices to continue that practice or dissipate or hide assets. The proposed amendment of section 8 of the Act will ensure that all parties involved will have an opportunity to submit to a court of law all relevant facts before an order is made to prohibit an unfair business practice pending the final outcome of an investigation.

To limit financial loss to consumers, it is necessary that the Minister on the recommendation of the Committee be allowed to apply to a court of law for the liquidation of a **business** or sequestration of a person believed to be applying an unfair business practice. It is also necessary to expand the powers of the curator through the assistance of legal representatives to ensure quicker results.

A provision is inserted allowing the Minister to delegate any or all the powers vested in him or her under this Act to the Deputy Minister of Trade and Industry or an official of the Department of Trade and Industry, provided that he or she retains the power of veto. The distribution of the responsibilities will ensure quick reaction when it is needed. The veto power will ensure that the Minister's powers in terms of the Act will not be eroded.

The activity of consumer affairs is a concurrent legislative competence in terms of the Constitution. It is the view of the legal representative that the section 76 route of the Constitution be followed.