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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 455.

19 March 1993

No. 455.

19 Maart 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 30 of 1993: Usury Amendment Act, 1993.

No. 30 van 1993: Woekerwysigingswet, 1993

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.

ACT

To amend the Usury Act, 1968, so as to amend certain definitions; to further regulate the levying of finance charges; to abolish certain exemptions regarding disclosure of finance charges in respect of certain money lending transactions and debentures; to further regulate the furnishing of certain information to borrowers, credit receivers and lessees; and to provide for the appointment of inspectors; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 11 March 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 73 of 1968, as amended by section 1 of Act 76 of 1970, section 1 of Act 62 of 1974, section 1 of Act 90 of 1980, section 1 of Act 42 of 1986, section 1 of Act 62 of 1987, section 1 of Act 100 of 1988 and section 1 of Act 67 of 1990 5

1. Section 1 of the Usury Act, 1968 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in the Afrikaans text for paragraph (b) of the definition of “grootboekgelde” of the following paragraph: 10
- “(b) ’n bankinstelling bedoel in paragraaf (a) (of sy volfiliaal) hef vir die uitreiking en gebruik van ’n kredietkaart ingevolge ’n kredietkaartskema wat deur so ’n bankinstelling of volfiliaal as bestuurder van sodanige skema bedryf word;”;
- (b) by the substitution for the definition of “instrument of debt” of the following definition: 15
- “‘instrument of debt’ [includes a negotiable instrument, bond] means a written contract or agreement or other document containing the terms and conditions of any contract or agreement in connection with a money lending transaction or a credit transaction 20 or a leasing transaction [but does not include any covering bond in so far as it purports to convey security for future advances];”;
- (c) by the substitution for the definition of “Minister” of the following definition:
- “‘Minister’ means the Minister of [Finance] Trade and Industry;” 25
- (d) by the substitution for the definition of “Registrar” of the following definition:
- “‘Registrar’ means [the executive officer mentioned in section 1 of the Financial Services Board Act, 1990, or, as the Minister may deem

fit, a person appointed by him as registrar subject to the provisions of the Public Service Act, 1984 (Act No. 111 of 1984)] an officer as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984), appointed by the Minister as registrar to perform the functions and exercise the powers assigned to or conferred upon him by this Act;"; and 5

- (e) by the substitution in the definition of "regular payments" for the words preceding paragraph (a), and paragraph (a), of the following words and paragraph:

"regular payments" means payments made by way of a series of equal instalments at the end of equal consecutive periods, not longer than one year each, as from the date upon which a money lending transaction or a credit transaction or a leasing transaction was concluded: Provided that for the purposes of this definition—

- (a) the instalments shall be deemed to be equal if all the instalments in the series of instalments are equal except one which 15

(i) does not exceed any of the other instalments by more than ten percent; or

(ii) is smaller than any of the other instalments; and] does not differ from the other instalments in the series of instalments by more than ten percent;". 20

Amendment of section 2 of Act 73 of 1968, as substituted by section 2 of Act 90 of 1980 and amended by section 2 of Act 42 of 1986, section 2 of Act 62 of 1987 and section 2 of Act 100 of 1988 25

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

"(a) [calculate] levy finance charges calculated according to shorter or more periods than those according to which instalments or the outstanding balance of the principal debt must be paid in terms of an agreement in connection with the money lending transaction or the credit transaction or the leasing transaction concerned;"; and 30

- (b) by the substitution for subsection (12) of the following subsection: 35

"(12) If any borrower or credit receiver or lessee is required by a moneylender or credit grantor or lessor to pay

[(a)] any portion of the principal debt on the date of the transaction concerned [or

(b) in respect of such transaction finance charges for more than three months in advance] 40

such moneylender or credit grantor or lessor shall reduce the principal debt in question by the amount of such portion [or the amount exceeding the amount of finance charges for three months, and he shall not be entitled to stipulate for, demand or receive any finance charges in respect of the amount so exceeding]". 45

Amendment of section 3 of Act 73 of 1968, as amended by section 3 of Act 76 of 1970, section 3 of Act 62 of 1974, section 4 of Act 90 of 1980, section 4 of Act 42 of 1986, section 3 of Act 62 of 1987, section 4 of Act 100 of 1988 and section 2 of Act 91 of 1989 50

3. Section 3 of the principal Act is hereby amended by the deletion of paragraphs (e) and (f) of subsection (3).

Amendment of section 5 of Act 73 of 1968, as substituted by section 8 of Act 90 of 1980 and amended by section 6 of Act 42 of 1986, section 4 of Act 62 of 1987, section 3 of Act 91 of 1989 and section 3 of Act 67 of 1990 55

4. Section 5 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) finance charges on the principal debt and **[if applicable, in terms of section 2A(1)(a) and]** on the amount referred to in paragraph (b) at **[an] the annual finance charge rate [not exceeding the relevant rate determined by or in terms of section 2(1), (2) or (3) or contemplated in] stipulated in the instrument of debt and, if section [2A(1)] 2A(1)(a) is applicable [in respect of the money lending transaction or credit transaction or leasing transaction], at the rate contemplated in the said section;**”.

Amendment of section 10 of Act 73 of 1968, as substituted by section 13 of Act 90 of 1980 and amended by section 7 of Act 100 of 1988, section 5 of Act 91 of 1989 and section 5 of Act 67 of 1990

5. Section 10 of the principal Act is hereby amended—

(a) by the substitution for the proviso to subsection (3) of the following proviso:

“Provided that the provisions of this subsection shall not apply in respect of any bill of exchange, debit balance or money loan [or debenture] referred to in section 3(3) or any debenture [transaction referred to in subsection 5(a)].”; and

(b) by the deletion of paragraph (c) of subsection (5).

Amendment of section 13 of Act 73 of 1968, as amended by section 17 of Act 90 of 1980 and section 8 of Act 42 of 1986

6. Section 13 of the principal Act is hereby amended—

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

“(1) (a) **[An inspector appointed under section 2 of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), may at any time at the direction of the Registrar inspect the affairs of a moneylender or a credit grantor or a lessor for the purposes of this Act] If the Registrar deems it necessary for the achievement of the objects of this Act, he may inspect or cause to be inspected the activities or any part of the activities of a moneylender, credit grantor or lessor.**

(b) The Registrar may for the purposes of this section from time to time appoint officers as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984), as inspectors to carry out an inspection contemplated in paragraph (a) or to assist him with such an inspection.”;

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

“(2) **[The provisions of the Inspection of Financial Institutions Act, 1984, shall apply mutatis mutandis in respect of an inspection carried out in terms of subsection (1)] When the Registrar considers it necessary, he may appoint a person who is not in the full-time employment of the State as a temporary inspector for a particular inspection, or to assist an inspector contemplated in subsection (1) with a particular inspection.”;**

(c) by the substitution for subsection (3) of the following subsection:

“(3) **A person appointed in terms of subsection (2) shall, for the purpose of the inspection in question, have the same powers and duties as the inspector contemplated in subsection (1).**”; and

(d) by the addition of the following subsections:

“(4) **The Registrar shall issue to every person appointed under subsection (1) or (2) a certificate to the effect that he has been so appointed, and, in the case of a person appointed for, or to assist with, a particular inspection, that he has been appointed for such an inspection, and in the exercise of his powers and the performance of his duties that person shall on demand produce such certificate.**

(5) The Registrar or inspector who carries out an inspection in terms of this section, may—

- (a) at any time reasonable for the proper performance of his duty and without prior notice enter upon, enter, inspect or search any premises and make such enquiries as he may deem necessary;
- (b) examine or make copies of or make extracts from any book, statement or other document found upon the premises and which he on reasonable grounds suspects to relate to any type of financing relevant for the purposes of the inspection; 5
- (c) seize any book, statement or other document or commodity which in his opinion may afford evidence of any alleged contravention of this Act, and retain such book, statement, document or commodity until any legal or other proceedings in terms of this Act have been concluded or until it has been decided not to proceed with any contemplated proceedings; 10
- (d) while he is on the premises request any person found on the premises to immediately or at a time and place determined by the Registrar or inspector— 15
- (i) furnish such explanation to him as he may require in respect of any entry in any book, statement or other document referred to in paragraph (b); 20
- (ii) furnish such information to him in respect of a commodity found on the premises as he may require.
- (6) Any person who—
- (a) obstructs or hinders the Registrar or an inspector in the exercise of his powers or the performance of his duties under this section; 25
- (b) refuses or fails to furnish the Registrar or an inspector with any explanation or information or furnishes an explanation or information knowing it to be false or misleading; or
- (c) falsely represents himself to be an inspector, shall be guilty of an offence.”. 30

Short title

7. This Act shall be called the Usury Amendment Act, 1993.