

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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KANTOOR VAN DIE STAATSPRESIDENT

No. 458.

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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 geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 33 of 1993: Harmful Business Practices Amendment Act, 1993.

No. 33 van 1993: Wysigingswet op Skadelike Sakepraktyke, 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 Harmful Business Practices Act, 1988, so as to insert certain definitions; to further regulate the constitution of the Business Practices Committee; to provide for the appointment of liaison committees; to further regulate the power of the committee to make known information on current policy in relation to business practices; to further regulate a period within which a certain return shall be furnished; to make further provision regarding investigations by the committee; to provide for the attachment of certain property; to further regulate certain negotiations by the committee; to provide for the appointment of curators in certain cases; to repeal the power of the Minister to request the Price Controller to fix a maximum price; and to grant a right of appeal in certain cases; and to provide for matters connected therewith.

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

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

### Amendment of section 1 of Act 71 of 1988

1. Section 1 of the Harmful Business Practices Act, 1988 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of “business practice” of the following definition: 5
- “ ‘chairman’ means the chairman referred to in section 2(2);”

### Amendment of section 2 of Act 71 of 1988, as amended by section 1 of Act 64 of 1991

2. Section 2 of the principal Act is hereby amended— 10
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) (a) The committee shall consist of not fewer than four and not more than seven members appointed by the Minister on the grounds of having special knowledge of consumer affairs or knowledge of or experience in economics, industry, commerce, 15 law or the conduct of public affairs, of whom the Minister shall designate one as chairman and one as vice-chairman.
- (b) The Minister shall determine whether a member of the committee shall be a full-time or a part-time member.”; and
- (b) by the substitution for subsection (3) of the following subsection: 20
- “(3) When for any reason the chairman is not able to perform his functions or is not available, or when there is a vacancy in the office

of the chairman, [a member of the committee designated by the Minister] the vice-chairman shall act as chairman.”.

#### Insertion of section 3A in Act 71 of 1988

3. The following section is hereby inserted in the principal Act after section 3:

#### “Liaison committees

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3A. (1) (a) The chairman may appoint one or more liaison committees, which shall advise the committee on such matters as the chairman may determine and refer to a liaison committee for advice.

(b) A liaison committee shall consist of the number of members determined by the chairman.

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(2) A member of a liaison committee—

(a) shall be appointed for such period, but not exceeding three years, as the chairman may determine at the time of his appointment;

(b) who is not in the full-time service of the State, shall in connection with the activities of the liaison committee be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of State Expenditure;

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(c) shall vacate his office if he resigns as a member or if the chairman at any time terminates his period of office as a member because in the opinion of the chairman there are sound reasons for doing so;

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(d) may be reappointed at the expiry of his period of office by effluxion of time.

(3) The chairman and vice-chairman of a liaison committee shall be designated by the chairman.

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(4) The vice-chairman of a liaison committee shall act as chairman when the chairman of the liaison committee is not able to perform his functions or when he is not available, or when there is a vacancy in the office of the chairman of the liaison committee concerned.

(5) (a) The meetings of a liaison committee shall be held at such times and places as the chairman of the liaison committee concerned may determine.

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(b) The person presiding at a meeting of the liaison committee concerned shall determine the procedure at the meeting.

(c) The decision of a majority of the members of a liaison committee present at a meeting thereof shall constitute the decision of that liaison committee.”.

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#### Amendment of section 4 of Act 71 of 1988, as substituted by section 2 of Act 64 of 1991

4. Section 4 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 40

“(a) shall from time to time make known information on current policy in relation to business practices in general and harmful business practices in particular, to serve as general guidelines for persons affected thereby;”.

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#### Amendment of section 6 of Act 71 of 1988

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No person shall in a notice under subsection (1) be directed to furnish the committee with a return specified in that notice within a period of less than [14] seven days after the date of the notice.” 50

**Amendment of section 8 of Act 71 of 1988, as amended by section 1 of Act 43 of 1990**

6. Section 8 of the principal Act is hereby amended—

(a) by the deletion of paragraph (c) of subsection (1);

(b) by the substitution for subsections (2) and (3) of the following subsections, respectively: 5

“(2) An investigation in terms of subsection (1) or section 4(1)(c) shall not be made or proceeded with by the committee on its own initiative, if in the opinion of the Minister such an investigation is not in the public interest.

(3) **[Where]** If any action is prescribed by the Minister under subsection (5) of this section, the committee shall within **[three] six** months from the date of the notice contemplated in subsection (4) of this section report to the Minister in terms of section 10(1) on the result of the investigation, or on any arrangement which may have been made under section 9.”; 10

(c) by the substitution for subsection (5) of the following subsection: 15

“(5)(a) After such a notice relating to an investigation in terms of subsection (1)(a) has been published and before the relevant report is submitted to him the Minister may, on the recommendation of the committee— 20

(i) prescribe by notice in the *Gazette*, for a period specified in the notice, but not exceeding the period of **[three] six** months referred to in subsection (3), such action as in the opinion of the Minister shall be taken to stay or prevent any harmful business practice which is the subject of the investigation and which the Minister has reason to believe exists or may come into existence; 25

(ii) by notice in writing or by notice in the *Gazette*—

(aa) attach any money or other property whether movable or immovable which is related to such investigation and which is held by any person on account or on behalf of or for the benefit of a person mentioned in the notice, or of a customer, debtor or creditor of the person mentioned in the notice, until a curator referred to in section 12(2) takes that money or other property into his possession; 30 35

(bb) prohibit a person mentioned in the notice from withdrawing or otherwise dealing with any money or movable or immovable property mentioned in the notice. 40

(b) If the Minister has issued a written notice under paragraph (a)(ii), a copy of such notice shall as soon as practicable be published in the *Gazette*.

(c) If the Minister attached any immovable property under paragraph (a)(ii), he shall as soon as practicable notify the registrar of deeds of such attachment.”; and 45

(d) by the substitution for subsection (6) of the following subsection:

“(6) A notice under subsection (5) may, on the recommendation of the committee, be amended or withdrawn by the Minister at any time **[and shall not be subject to review by or appeal to any court of law].**” 50

**Amendment of section 9 of Act 71 of 1988**

7. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) When the committee has decided to undertake a preliminary investigation in terms of section 4(1)(c), or has issued a notice in terms of section 8(4) in relation to an investigation in terms of section 8(1)(a), it may 55

at any time thereafter negotiate with any person or body, corporate or unincorporate, with a view to making an arrangement which in the opinion of the committee will ensure the discontinuance of a harmful business practice which exists or may come into existence and which is the subject of the investigation, either wholly or to such extent as, in the opinion of the committee, it is not justified in the public interest.” 5

**Amendment of section 12 of Act 71 of 1988, as amended by section 3 of Act 43 of 1990**

8. Section 12 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (a) of subsection (1); 10  
 (b) by the addition after paragraph (c) of subsection (1) of the following paragraph:

“(d) if money was accepted from consumers and he deems it necessary to limit or prevent financial losses by those consumers, appoint a curator, with the concurrence of the special court, in order to realize the assets of the person involved in a harmful business practice and to distribute them between the consumers concerned and to take control of and manage the whole or any part of the business of such a person.”; 15 20

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

“(2) (a) The powers and duties of a curator referred to in subsection (1)(d) shall be determined by the Minister, who shall appoint such curator by letter of appointment setting out—

- (i) the name of the person in respect of whom the curator is appointed and his address; 25  
 (ii) directions in regard to the security which the curator has to furnish for the proper performance of his duties;  
 (iii) directions in regard to the remuneration of the curator; and 30  
 (iv) such other directions concerning the performance by such curator of his duties and functions, or the management of the affairs of the person concerned, or any other matter incidental thereto, as the Minister may deem necessary.

(b) The Minister may appoint a person who is not employed by the curator, as joint curator. 35

(c) The curator, or the joint curator who is not in the employ of the State, shall out of the funds of the person involved in the harmful business practice in respect of the services rendered by them, be paid such remuneration as the Master of the division of the Supreme Court of South Africa concerned may in consultation with the curator or the joint curator, as the case may be, determine: 40  
 Provided that if the funds of the person involved in the harmful business practice appear to be insufficient to adequately compensate the curator or the joint curator, as the case may be, the curator or the joint curator shall in respect of the services rendered by them be paid such remuneration and allowances as the Minister with the concurrence of the Minister of State Expenditure may determine. 45

(d) The Minister shall as soon as practicable announce the appointment of a curator and the powers granted to him on his appointment, and any amendment or withdrawal of such powers, by notice in the *Gazette*. 50

(e) The Minister may, in the letter of appointment or at any time subsequent thereto, empower the curator in his discretion, but subject to any condition which the Minister may impose—

- (i) to suspend or restrict, as from the date of his appointment as curator or any subsequent date, the right of creditors of the person involved in the harmful business practice to 55



- claim or receive any money owing to them by that person;
- (ii) to make payments, transfer property or take steps for the transfer of property to any creditor or creditors of the person involved in the harmful business practice at such time, in such order and in such manner as he may deem fit; 5
- (iii) to cancel any agreement between the person involved in the harmful business practice and any other party: Provided that where the agreement so cancelled is a lease of movable or immovable property entered into by the person involved in the harmful business practice prior to the appointment of a curator, a claim for damages in respect of such cancellation may be instituted against that person after the expiration of one year as from the date of such cancellation unless the court grants permission that such claim may be instituted before the expiry of such period; 10
- (iv) to enter into agreements on behalf of the person involved in the harmful business practice; 15
- (v) to convene from time to time, in such manner as he may deem fit, a meeting of creditors of the person involved in the harmful business practice, for the purpose of establishing the nature and extent of that person's indebtedness to such creditors and for consultation with such creditors in so far as the curator deems it necessary; 20
- (vi) to negotiate with any creditor of the person involved in the harmful business practice with a view to the final settlement of the affairs of such creditor with that person; 25
- (vii) to make and carry out, in the course of his management of the affairs of the person involved in the harmful business practice, any decision which in terms of the provisions of the Companies Act, 1973 (Act No. 61 of 1973), would have been required to be made by way of a special resolution contemplated in section 199 of that Act; 30
- (viii) to dispose, by public auction, tender or negotiation, of any asset of the person involved in the harmful business practice, including— 35
- (aa) any advance or loan; or
- (bb) any asset for the disposal of which approval in terms of section 228 of the Companies Act, 1973, is necessary.
- (f) The Minister may, at any time and in any manner, amend or withdraw any power granted or duty imposed in the letter of appointment or under paragraph (e). 40
- (g) At the appointment of a curator—
- (i) the management of the business or affairs of the person involved in the harmful business practice shall vest in the curator, subject to the supervision of the Master, and any other person vested with the management of the affairs of that person shall be divested thereof; and 45
- (ii) the curator shall recover and take possession of all the assets of the person involved in the harmful business practice. 50
- (h) While such person is under curatorship—
- (i) all actions and legal proceedings and the execution of all writs, summonses and other legal process against that person shall, subject to the provisions of paragraph (e)(iii), be stayed and not be instituted or proceeded with, without the leave of the court; and 55
- (ii) the operation of set-off in respect of any amount owing by a creditor to the person shall be suspended.

(i) A curator shall act in the best interests of the clients, debtors and creditors of the person placed under curatorship.

(j) When a notice whereby a curator is appointed is published under section 12(1)(d), all proceedings in connection with the winding-up of a company or close corporation which may be pending in a court of law and in respect of which a liquidator has been appointed, shall be suspended until the appointment of a curator, and any attachment or execution put in force against the estate or assets of that company or close corporation shall be void.

(k) No steps in terms of section 311 of the Companies Act, 1973, or in terms of section 72 of the Close Corporations Act, 1984 (Act No. 69 of 1984), for the conclusion of a compromise, arrangement or composition between a company or close corporation in respect of which a curator has been appointed in terms of this subsection and its creditors shall be taken and any such steps already commenced shall not be proceeded with, and the costs in connection with such proceedings or steps already commenced shall, unless the court concerned orders otherwise, be deemed to be part of the costs of the winding-up of that company or close corporation.

(l) The curator shall report to the chairman on his administration of the affairs of the person involved in the harmful business practice, and shall at the request of the chairman provide any other information set out in that request.

(m) The curator shall keep proper record of the steps taken by him in the performance of his functions and of the reasons why such steps were taken.”; and

(d) by the deletion of subsection (3).

#### Amendment of section 13 of Act 71 of 1988

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

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

“(1) There shall be a right of appeal by any person affected by a notice under section 8(5), or 12(1)(b), [or] (c) or (d), to a special court.”;

(b) by the substitution for subsection (13) of the following subsection:

“(13) (a) The decision of a special court shall [not] be subject to [review by or appeal to any court of law] appeal.

(b) The provisions of section 86A of the Income Tax Act, 1962 (Act No. 58 of 1962), shall apply *mutatis mutandis* to an appeal from the special court, and a reference in the Afrikaans text of that section to the ‘Voorsitter van die spesiale hof’ shall be construed as a reference to the ‘president van die spesiale hof’ and a reference in that section to the ‘Commissioner’ as a reference to the ‘Minister’ or the ‘curator’ concerned, as the case may be.”;

#### Short title

10. This Act shall be called the Harmful Business Practices Amendment Act, 1993.