

REPUBLIC OF SOUTH AFRICA

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

*(As introduced in the National Council of Provinces as a section 76 Bill; explanatory
summary of Bill published in Government Gazette No 22249 of 24 April 2001)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON ECONOMIC AFFAIRS)

[B 28—2001]

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suspending the business practice in question pending the outcome of an investigation by the committee.

(2) The judge or magistrate contemplated in subsection (1) may issue such order as he or she may deem appropriate in order to protect the interests of consumers, and may, subject subsection (3), appoint a *curator bonis* in respect of the business in question.

(3) If a judge or magistrate has appointed a *curator bonis*—

(a) the judge or magistrate may direct the *curator bonis* to do any one or more of the following on behalf of the business in respect of which the order has been made, namely—

(i) perform any particular act in respect of any of or all the assets of the business, whether corporeal or incorporeal;

(ii) take care of the said assets;

(iii) administer the said assets; and

(iv) carry on with the business with due regard to any law which may be applicable to the business; and

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

(4) The judge or magistrate who made an order contemplated in subsection (2)—

(a) shall discharge the *curator bonis* if the relevant court order is rescinded;

(b) may make an order for payment of the fees of the *curator bonis*—
 (i) from the confiscated proceeds if a confiscation order is made; or
 (ii) by the State if no confiscation order is made.

(5) Any person affected by an order contemplated in subsection (2) 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* or for the discharge of that *curator bonis*.”.

Amendment of section 10 of Act 71 of 1988, as amended by section 2 of Act 43 of 1990

4. Section 10 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (2).

Amendment of section 12 of Act 71 of 1988, as amended by section 3 of Act 43 of 1990, section 8 of Act 33 of 1993 and section 8 of Act 23 of 1999

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

“(i) A curator shall—

(i) act in the best interests of the clients, debtors and creditors of the person placed under curatorship; and

(ii) be entitled to the assistance of an attorney or advocate when interrogating any person summonsed, and such attorney or advocate may cross-examine such person.”.

Short title

6. This Act shall be called the Consumer Affairs (Unfair Business Practices) Amendment Act, 2001.

**MEMORANDUM ON THE OBJECTS OF THE CONSUMER AFFAIRS
(UNFAIR BUSINESS PRACTICES) AMENDMENT BILL, 2001**

1. On 29 September 2000, the Constitutional Court found section 8(5) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988) (“the Act”), to be unconstitutional. This section empowers 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 relating to an investigation. 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 those practices or to dissipate or hide assets.

2. The Bill seeks to enable the Minister, prior to any investigation or report by the Committee, where he or she has reason to suspect that any business practice amounts to or is likely to amount to an unfair business practice, to apply to a judge of the High Court or a magistrate who has jurisdiction for an interdict suspending the unfair business practice pending the outcome of an investigation by the Committee. Apart from the fact that this amendment is necessary so as to comply with the Constitutional Court judgment, its insertion is important to ensure that the objects of the Act and the application thereof are not frustrated.

3. The Bill also seeks to allow the chairperson of the Committee to appoint a person skilled in the art of cross-examination to assist the Committee when it questions a person who is an authority on a subject under investigation. It is also proposed that a curator should be entitled to the assistance of an attorney or advocate when he or she cross-examines a person summonsed.

4. CONSULTATION

The Bill was circulated to more than 70 organisations, including universities, business chambers, enforcement agencies, consumer organisations and provincial government departments. The majority of the organisations supported the proposed amendments and also made constructive proposals which have been accommodated in the Bill.

5. FINANCIAL IMPLICATIONS FOR STATE

There are no significant financial implications.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely “Consumer protection”.