

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.



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Verkoopprys • Selling price
(AVB uitgesluit/GST excluded)

Plaaslik **45c** Local
Buitelands 60c Other countries
Posvry • Post free

Vol. 250

KAAPSTAD, 30 APRIL 1986

No. 10216

CAPE TOWN, 30 APRIL 1986

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 812.

30 April 1986

No. 812.

30 April 1986

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

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

■o. 42 van 1986: Wysigingswet op Beperking en Bekendmaking van Finansieringskoste, 1986.

No. 42 of 1986: Limitation and Disclosure of Finance Charges Amendment Act, 1986.

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

GENERAL EXPLANATORY NOTE:

- []** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Limitation and Disclosure of Finance Charges Act, 1968, so as to bring certain arrangements and schemes within the ambit of a "credit card scheme"; to extend the definition of "ledger fee" to include fees charged by banking institutions for the initial issue of credit cards; to remove certain cash sales of immovable property from the ambit of a "money-lending transaction"; to include certain further sums in the definition of "principal debt"; to remove possible doubt as to the meaning of "different money values" in the provisions dealing with the maximum annual finance charge rates which may be charged in connection with a money lending transaction, credit transaction or leasing transaction, and to provide for a different manner of determining finance charges; to exempt instruments of debt in the form of registered bonds from the requirement of disclosure of finance charges, and to provide for the execution of instruments of debt also by a representative of the money-lender, credit grantor or lessor; to provide for a different manner of determining finance charges in respect of money lending transactions secured by certain mortgage bonds; to provide that the disclosure of finance charges on demand shall be in writing, and that such disclosure may also be made by a representative of the money-lender, credit grantor and lessor; to effect a textual alteration as a result of the activities of the National Finance Corporation of South Africa passing to the Corporation for Public Deposits; to make other provision regarding the annual finance charge rate which applies when an additional amount is recoverable from a borrower, credit receiver or lessee by reason of his default or the deferment of payment of his debt; to provide for certain further sums that may be recovered from a borrower, credit receiver or lessee; to remove possible doubt as to the meaning of "leasing transaction" in the provisions dealing with the money value of leased property at the expiry of the lease or the termination of the leasing transaction, and to extend the class of debts which a lessor may set-off when required to pay a balance to a lessee in those circumstances; to replace certain obsolete expressions; and to alter the short title; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 22 April 1986.)

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

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

1. Section 1 of the Limitation and Disclosure of Finance Charges Act, 1968 (hereinafter referred to as the principal Act), is hereby amended—

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 and section 1 of Act 90 of 1980.

(a) by the substitution in the definition of "credit card scheme"—

(i) for subparagraph (ii) of paragraph (a) of the following subparagraph:

10 “(ii) in terms of, and on the conditions of, an agreement between himself and a supplier, undertakes to pay for any goods purchased or services obtained from such supplier by a credit card holder, or for any rights in any agreement for the purchase or obtaining of such goods or services, on the strength of a valid credit card issued to him by such manager;”; and

20 (ii) for subparagraph (i) of paragraph (c) of the following subparagraph:

25 “(i) to pay to such manager any amount paid by such manager to a supplier in respect of goods sold or services rendered by such supplier to such credit card holder, or in respect of any rights in any agreement for the purchase or obtaining of such goods or services, on the strength of a valid credit card issued to him by such manager;”;

30 (b) by the substitution for the definition of "ledger fee" of the following definition:

““ledger fee” means a fee charged by—

35 (a) a banking institution as defined in section 1 (1) of the Banks Act, 1965 (Act No. 23 of 1965), for keeping on behalf of a client a cheque account from which withdrawals may be made by such client by means of a cheque which is eligible for clearing through the clearing house system of the clearing banks of South Africa and which is so charged whether the account shows a debit balance or a credit balance; or

40 (b) a banking institution contemplated in paragraph (a) (or its wholly-owned subsidiary) for the initial issue of a credit card in terms of a credit card scheme operated by such banking institution or wholly-owned subsidiary as manager of such scheme;”;

50 (c) by the substitution for paragraph (c) of the definition of "money-lending transaction" of the following paragraph:

55 “(c) any transaction under which immovable property is sold against payment by the purchaser to, or to any person on behalf of, the seller of a sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future, in which case such sum, excluding finance charges, shall for the purposes of this Act be deemed to be a sum of money lent by the seller to the purchaser, but does not include a transaction under which immovable property is sold and in terms of which—

60 (i) no finance charges are levied by the seller on the purchase price;

65 (ii) the full purchase price is payable against registration of the immovable property in the name

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

- of the purchaser or a transferee nominated by the purchaser; and
- (iii) no interim instalment is payable by the purchaser between the date of the sale and such registration, save for an initial deposit payable in one amount by the purchaser to a practising attorney or an estate agent to be held in trust pending such registration, and rent or occupational interest constituting a reasonable compensation for the use and enjoyment by the purchaser of the immovable property in question;"; and
- (d) (i) to omit subparagraph (*ddd*) in paragraph (*a*) (iii) (*aa*) of the definition of "principal debt";
- (ii) to omit the word "or" after subparagraph (*ee*) and by the addition to the said definition of the following subparagraphs:
- "(*ff*) the costs actually paid by the money-lender to a person who practises as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company in respect of the preparation of the documents, including the instrument of debt in question and other documents for the security of the loan, embodying the money-lending transaction in question;
- (*gg*) where the money loan is not wholly or partly secured by a mortgage bond over immovable property or a notarial bond over movable property, the taxes, charges, fees and premiums of the kind referred to in subparagraphs (*a*) (iii) (*aa*) (*bbb*) and (*ccc*) relating to the property which is the subject of the money loan and which were actually paid or are to be paid by the money-lender on behalf of the borrower; or";
- (iii) by the substitution for subparagraph (*ff*) of paragraph (*b*) (iv) of the definition of "principal debt" of the following subparagraph:
- "(*ff*) the costs actually paid by the credit grantor to a person who practises as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company in respect of the preparation of the documents, including the instrument of debt in question and other documents for the security of the debt, embodying the credit transaction in question; or" and
- (iv) by the substitution for subparagraph (*ff*) of paragraph (*c*) (iii) of the definition of "principal debt" of the following subparagraph:
- "(*ff*) the costs actually paid by the lessor to a person who practises as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company in respect of the preparation of the documents, including the instrument of debt in question and other documents for the security of the debt, embodying the leasing transaction in question;".

2. (1) Section 2 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
- "(2) No credit grantor shall in connection with any credit transaction stipulate for, demand or receive

Amendment of section 2 of Act 73 of 1968, as amended by section 2 of Act 76 of 1970,

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

5 finance charges at an annual finance charge rate greater than 18,25% or, if any other percentage, whether greater or smaller, is prescribed by regulation for the purposes of this subsection, than the percentage so prescribed from time to time: Provided that different percentages may be so prescribed for credit transactions of different money values of the principal debt.”;

section 2 of Act 62 of 1974 and section 2 of Act 90 of 1980.

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

10 “(3) No lessor shall in connection with any leasing transaction stipulate for, demand or receive finance charges at an annual finance charge rate greater than the percentage prescribed from time to time by regulation for the purposes of this subsection: Provided that different percentages may be so prescribed for leasing transactions of different money values of the principal debt.”;

(c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

20 “(a) the [annual add-on rate equal to the annual finance charge rate at which] amount of finance charges which may be levied in respect of a money-lending transaction or a credit transaction or a leasing transaction in connection with which it has been agreed that payment of the principal debt and finance charges must be effected by way of regular payments;”;

(d) by the substitution for subsection (9) of the following subsection:

30 “(9) Save in respect of a debit balance in a cheque account with a banking institution as defined in section 1 (1) of the Banks Act, 1965 (Act No. 23 of 1965), and a bond over movable or immovable property which is registered in a deeds registry, and subject to the provisions of sections 4 and 5, no person shall in respect of a money lending transaction or a credit transaction or a leasing transaction stipulate for, demand or receive from a borrower or credit receiver or lessee finance charges not disclosed in an instrument of debt executed by the money-lender or credit grantor or lessor in respect of any such transaction or by his authorized representative.”.

(2) The provisions of subsection (1) (c) come into operation on a date fixed by the State President by proclamation in the Gazette.

3. Section 2A of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

50 “(a) from the date on which such money-lender approved such loan until the date immediately preceding the date on which such sum of money is paid to or on behalf of the borrower, at an annual finance charge rate not exceeding the difference between the annual finance charge rate stipulated in the instrument of debt relating to such money-lending transaction and the [annual interest rate] treasury bills rate applicable [to moneys invested] on the date on which such loan is approved [with the National Finance Corporation of South Africa by way of call deposit money]: Provided that where the money-lender is required to furnish any guarantees on behalf of the borrower and for such purpose to deposit any money with the institution issuing the guarantee, he may recover the difference between the annual finance charge rate stipulated in the instrument of debt

Amendment of section 2A of Act 73 of 1968, as inserted by section 3 of Act 90 of 1980.

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

and the rate recoverable by him from such institution;”.

4. Section 3 of the principal Act is hereby amended—

5 (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

10 “(1) A money-lender carrying on the business of money-lending or his authorized representative shall, on demand before the conclusion of any money-lending transaction in connection with which finance charges are or will be payable, furnish separately, **[and]** distinctly and in writing to the prospective borrower, and, whether or not any such demand is made, shall set out separately and distinctly in every instrument of debt executed in respect of any such transaction, in so far as the same may be known and determinable, the following particulars:”;

15 (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

20 “(2) A credit grantor who transacts credit transactions in the normal course of his business or his authorized representative shall, on demand before the conclusion of any credit transaction in connection with which finance charges are or will be payable, furnish separately, **[and]** distinctly and in writing to the prospective credit receiver, and, whether or not any such demand is made, shall set out separately and distinctly in every instrument of debt executed in connection with any such transaction, in so far as the same may be known and determinable, the following particulars:”;

25 (c) by the substitution for the words preceding paragraph (a) of subsection (2A) of the following words:

30 “(2A) A lessor who transacts leasing transactions in the normal course of his business or his authorized representative shall, on demand before the conclusion of any leasing transaction in connection with which finance charges are or will be payable, furnish separately, **[and]** distinctly and in writing to the prospective lessee and, whether or not any such demand is made, shall set out separately and distinctly in every instrument of debt executed in connection with any such transaction, in so far as the same may be known and determinable, the following particulars:”;

35 (d) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

40 “(a) a bill of exchange when such bill is executed or discounted by the South African Reserve Bank, the **[National Finance Corporation of South Africa] Corporation for Public Deposits** or a banking institution as defined in section 1 (1) of the Banks Act, 1965 (Act No. 23 of 1965);”.

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 and section 4 of Act 90 of 1980.

5. The following section is hereby substituted for section 4 of the principal Act:

55 “Limitation of sum recoverable on default or deferment of payment. 4. If a borrower or credit receiver or lessee fails to pay any amount which is owing by him to a money-lender or credit grantor or lessor in connection with a money lending transaction or a credit transaction or a leasing transaction, upon the date when such amount is payable, or if a borrower or credit receiver or lessee enters into an agreement with a money-lender or a credit grantor or a lessor to defer the payment of an amount which is owing by him as aforesaid to the money-lender or credit grantor or lessor, the money-lender or credit grantor or lessor shall thereupon be entitled to recover from the borrower or credit receiver or lessee an additional amount in

Amendment of section 4 of Act 73 of 1968, as amended by section 6 of Act 90 of 1980.

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

5 respect of finance charges, which shall be calculated
by reference to the total amount which is payable but
is unpaid, **[the annual finance charge rate at which
finance charges were charged initially on the principal
debt and, as the case may be]** the period during
10 which the default continues or the period for which
payment is deferred as aforesaid, as the case may be,
and the annual finance charge rate at which finance
charges on the outstanding balance of the principal
debt are, in terms of the instrument of debt, calcu-
lated during such period.”.

6. Section 5 of the principal Act is hereby amended by the de- Amendment of
letion of the word “and” at the end of paragraph (e) of subsec- section 5 of
tion (1), and by the addition to that subsection of the following Act 73 of 1968,
15 paragraphs: as substituted
by section 8 of
Act 90 of 1980.

“(g) reasonable ledger fees, if applicable;
(h) reasonable underwriting fees, if incurred;
(i) subject to the provisions of sections 6K (3) and 11A,
20 the cost of repair and maintenance of movable property
leased in terms of a leasing transaction;
(j) an amount payable for services rendered as contem-
plated in section 2 (1) (b).”.

7. Section 6K of the principal Act is hereby amended— Amendment of
25 (a) by the substitution for subsection (2) of the following section 6K of
subsection: Act 73 of 1968,
as inserted by
section 10 of
Act 90 of 1980.

“(2) Where a leasing transaction in respect of which
finance charges are levied is terminated by a lessor on
30 account of the failure of the lessee to meet his obliga-
tions in terms of such transaction, the lessor shall deter-
mine the money value, as at the date on which such
transaction is so terminated, of the movable property
leased in terms of such transaction, and notify the lessee
in writing within 14 days after the lessor obtains access
35 to the property to enable a valuation to be made.”; and
(b) by the substitution for subsection (3) of the following
subsection:
“(3) If—
40 (a) on expiry of the **[lease] leasing transaction in re-
spect of which finance charges are levied** the
money value, as determined in terms of subsection
(1), of the movable property leased in terms of the
leasing transaction concerned, exceeds the book
45 value thereof or if such property is sold or leased
to a person other than the lessee in terms of such
transaction, at a price or money value, not includ-
ing finance charges, exceeding such book value,
the lessor in terms of such transaction, shall pay to
the lessee, after deducting any amount owing by
50 the lessee to the lessor **[in terms of such transac-
tion]**, in cash the amount by which the money
value so determined or the price or money value,
not including finance charges, at which such prop-
erty is sold or leased to such other person, which-
ever is the greater, exceeds such book value; or
55 (b) a leasing transaction in respect of which finance
charges are levied is terminated before the expiry
of the lease agreed upon at the conclusion of such
transaction, and the movable property leased in
terms of such transaction is sold or leased to a per-
60 son other than the lessee in terms of such transac-
tion, at a price or money value, not including
finance charges, exceeding the money value there-
of as determined in terms of subsection (1) or (2),
the lessor shall pay to the lessee, after deducting

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

5 any amount owing by the lessee to the lessor **[in terms of such transaction]**, in cash the amount by which the price or money value, not including finance charges, at which such property is sold or leased to such other person exceeds the money value so determined in terms of subsection (1) or (2):

10 Provided that the lessor shall, if he after such expiry or termination repaired or caused to be repaired such property, be entitled to reduce for the purposes of calculating the amount to be paid as aforesaid to the lessee in cash, the price or money value at which such property was sold or leased to a person other than the lessee by the costs actually incurred by such lessor in respect of such repair.”.

15

8. Section 13 of the principal Act is hereby amended by the substitution for the expressions “Inspection of Financial Institutions Act, 1962 (Act No. 68 of 1962),” and “Inspection of Financial Institutions Act, 1962,” wherever they occur, of the expressions “Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984),” and “Inspection of Financial Institutions Act, 1984,” respectively.

20

Amendment of section 13 of Act 73 of 1968, as amended by section 17 of Act 90 of 1980.

9. Section 21 of the principal Act is hereby amended by the substitution for the expression “Limitation and Disclosure of Finances Charges Act” of the expression “Usury Act”.

25

Amendment of section 21 of Act 73 of 1968.

10. This Act is called the Limitation and Disclosure of Finance Charges Amendment Act, 1986.

Short title.