

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

PRYS + 1c AVB 20c PRICE + 1c GST
BUITELANDS 30c ABROAD
POSVRY · POST FREE

VOL. 182]

KAAPSTAD, 1 AUGUSTUS 1980

[No. 7143

CAPE TOWN, 1 AUGUST 1980

KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 1518.

1 Augustus 1980.

No. 1518.

1 August 1980.

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

No. 90 van 1980: Wysigingswet op Beperking en Bekendmaking van Finansieringskoste, 1980.

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

No. 90 of 1980: Limitation and Disclosure of Finance Charges Amendment Act, 1980.

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

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, relating to definitions; to apply the provisions of the said Act in respect of certain leasing transactions; relating to the finance charge rates which may be stipulated for or demanded or received in respect of money lending transactions, credit transactions and leasing transactions; to limit the finance charges in respect of money lending transactions secured by certain bonds; relating to the particulars to be stated by certain lessors in respect of leasing transactions; the particulars in instruments of debt concerning the payment before the due dates of principal debts and finance charges owing in terms of certain transactions; the failure of debtors to pay the principal debts and finance charges owing in terms of certain transactions on the dates in respect of which they notified the creditors in writing that they would pay such principal debts and finance charges; the recovery of certain costs incurred in connection with certain transactions; the payment before the due dates of portions of the principal debts and finance charges in terms of certain transactions; the consequences of notices concerning the payment before the due dates of the principal debts and finance charges owing in terms of certain money lending transactions and credit transactions; the consequences of certain agreements concerning changes of the amounts of instalments and concerning the consolidation of the amounts of principal debts and finance charges payable in terms of money lending transactions and credit transactions; the replacement of movable property leased in terms of certain leasing transactions; the consequences of agreements concerning changes of the amounts payable in terms of certain leasing transactions; the termination of leasing transactions before the expiry of the leases in question; the consequences of notices concerning payment before the due dates of the principal debts and finance charges owing in terms of certain leasing transactions in cases where such transactions have been terminated and in cases where such transactions have not been terminated; the payment without notice before the due dates of the principal debts and finance charges owing in terms of certain leasing transactions in cases where such transactions have been terminated and in cases where such transactions have not been terminated; the money value of movable property at the expiry of the leases in terms of, or at the termination of, the leasing transactions under which such property is being leased; the recovery of certain additional finance charges and legal costs in respect of certain leasing transactions; the furnishing of certain information by moneylenders, credit grantors and lessors to borrowers, credit receivers and lessees; the recovery of costs in connection with the repair and

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

maintenance of movable property leased in terms of certain leasing transactions; and exemptions from the provisions of the said Act; and to provide for the reference by the Registrar of Financial Institutions of certain questions of law for the opinion of the Supreme Court; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 1 July 1980.)

BE IT ENACTED by the State President, the Senate and the House of Assembly 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 and section 1 of Act 62 of 1974.

- (a) by the insertion before the definition of "annual finance charge rate" of the following definition:
 "annual add-on rate" means a rate calculated by expressing the annual finance charges as a percentage of the principal debt;";
- (b) by the insertion after the definition of "annual finance charge rate" of the following definition:
 "book value" means, in relation to movable property leased in terms of a leasing transaction, the money value of such property at the expiry of the lease, as determined by the lessor at the time of the conclusion of such transaction;";
- (c) by the insertion after the definition of "borrower" of the following definitions:
 "credit card" means any document of identification, irrespective of the form thereof, issued in connection with a credit card scheme by a manager to a credit card holder;
 'credit card holder' means a credit card holder referred to in the definition of credit card scheme;
 'credit card scheme' means any arrangement or scheme under which—
 (a) any person (in this definition referred to as a manager) carrying on such arrangement or scheme—
 (i) authorizes any person (in this definition referred to as a credit card holder) in terms of, and on the conditions of, an agreement between the manager and the credit card holder—
 (aa) to purchase any goods or obtain any services on the strength of a valid credit card issued to him by such manager from any person (in this definition referred to as a supplier) authorized by such manager in terms of, and on the conditions of, an agreement between such manager and the supplier to sell goods or render services to any such credit card holder on the strength of a valid credit card issued to him by such manager;
 (bb) to obtain an amount of cash from such manager on the strength of a

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980.

Act No. 90, 1980

- valid credit card issued to him by such manager;
- 5 (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 on the strength of a valid credit card issued to him by such manager;
- 10 (b) a supplier in terms of, and on the conditions of, an agreement between himself and a manager undertakes to sell goods or render services to a credit card holder on the strength of a valid credit card issued to him by such manager;
- 15 (c) a credit card holder in terms of, and on the conditions of, an agreement between himself and a manager undertakes—
- 20 (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 on the strength of a valid credit card issued to him by such manager;
- 25 (ii) to repay to such manager any amount of cash obtained by such credit card holder from such manager on the strength of a valid credit card issued to him by such manager;”;
- 30 (d) by the substitution for the definition of “credit receiver” of the following definition:
“‘credit receiver’ means any **[natural]** person to whom a credit grantor has granted credit in terms of a credit transaction, or any **[natural]** person to whom, whether by delegation, cession or otherwise, the rights and obligations of a credit receiver in respect of a credit transaction have passed;”;
- 35
- (e) by the substitution for the definition of “credit transaction” of the following definition:
“‘credit transaction’ means any transaction, whatever its form may be, by which—
- 40
- (a) a credit grantor and a credit receiver agree that the credit grantor sell or supply to the credit receiver movable property or services **[intended mainly for personal, family, household or farming purposes]** against payment by the credit receiver to the credit grantor of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; or
- 45
- 50
- (b) a credit grantor and a credit receiver agree that the credit grantor transfer or grant to the credit receiver the use or enjoyment of movable property or services **[intended mainly for personal, family, household or farming purposes]** against payment by the credit receiver to the credit grantor of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future, but does not include any transaction by which it is agreed at the time of the conclusion of the
- 55
- 60

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

5 transaction **[(i)]** that the debtor, or any person
on his behalf, shall at no stage during the
period during which the use or enjoyment of
movable property is granted to him or thereaf-
ter, acquire ownership of such property and
that after the expiration of the said period, he
shall not retain the possession, use or enjoy-
ment of the property concerned; **[and (ii)]** that
10 the creditor shall, after the return to him of
the movable property, apart from arrear
instalments, not collect any further pay-
ments from the debtor unless at the time
the agreement was entered into, agreement
was reached in writing on the depreciated
15 value of the said property at any material
stage of the agreement and that upon
termination of the agreement an adjustment
shall be made only for the difference
between the agreed depreciated value and
20 the actual market value of the said property
at that particular time; **]**”;

(f) by the insertion after the definition of “credit transac-
tion” of the following definition:

““debenture” means—

- 25 (a) a debenture created and issued in terms of, and
in respect of which the person issuing it has
complied with, the provisions of the Com-
panies Act, 1973 (Act No. 61 of 1973);
30 (b) a security as defined in section 1 (1) of the
Exchequer and Audit Act, 1975 (Act No. 66
of 1975);
35 (c) any bill, bond, security or any other document
issued as evidence of the borrowing of money
by any institution, council or body contem-
plated in section 84 (1) (f) of the Republic of
South Africa Constitution Act, 1961 (Act No.
32 of 1961), or by the Electricity Supply
Commission or the Rand Water Board or by
40 any other institution, council or body desig-
nated for the purposes of this paragraph by the
Registrar by notice in the *Gazette*”;

(g) by the substitution for the definition of “finance
charges” of the following definition:

45 ““finance charges” means the total of any valuable
consideration, which **[apart from any amount
referred to in section 5 (1) (b) and any valuable
consideration which is specifically included in
the principal debt by this Act]** a borrower or
credit receiver or lessee has given or is owing,
50 whether as part of the principal debt or otherwise,
directly or indirectly, to a moneylender or credit
grantor or lessor or to or on behalf of any
intermediary between himself and a moneylender
or credit grantor or lessor in terms of a money
55 lending transaction or a credit transaction or a
leasing transaction, and includes, in the case of an
agreement in terms of which goods are sold under a
condition of repurchase of such goods at a higher
price, the difference between the higher price at
60 which the goods are repurchased and the lower
price at which the goods are sold, but does not
include—

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 (a) a ledger fee;
 (b) any amount referred to in section 5 (1) (b);
 (c) the costs referred to in section 5 (1) (e) or (f);
 (d) the costs of repair and maintenance of the
 movable property leased in terms of a leasing
 transaction;
 (e) any valuable consideration specifically in-
 cluded in the principal debt by this Act;
 (f) any underwriting fee;";
- 10 (h) by the substitution for the definition of "instrument of
 debt" of the following definition:
 "instrument of debt" includes a negotiable instrument,
 bond, written contract or agreement or other
 document containing the terms and conditions of
 15 any contract or agreement in connection with a
 money lending transaction or a credit transaction or
 a leasing transaction, but does not include any
 covering bond in so far as it purports to convey
 security for future advances;";
- 20 (i) by the insertion after the definition of "instrument of
 debt" of the following definitions:
 "intermediary" means any director, manager or
 25 employee of, and any person who acts on behalf of,
 a moneylender or a credit grantor or a lessor, and
 any person, except the moneylender or the credit
 grantor or the lessor concerned, who receives an
 application from any person who intends to borrow
 money in terms of a money lending transaction or
 to obtain credit in terms of a credit transaction or
 30 to lease movable property in terms of a leasing
 transaction, or who in any manner acts on behalf of
 any person so intending in any negotiations relating
 to such loan, obtaining or lease;
 "leasing transaction" means any transaction, whatever its
 35 form may be, by which a lessor leases movable
 property to a lessee against payment by the lessee
 to the lessor of a stated or determinable sum of
 money at a stated or determinable future date or in
 whole or in part in instalments over a period in the
 40 future, but does not include any transaction by
 which it is agreed at the time of the conclusion of
 the transaction that the debtor or any person on his
 behalf shall at any stage during or after the expiry
 of the lease or after the termination of the
 45 transaction become the owner of such movable
 property or after such expiry or termination, except
 in the circumstances referred to in section 6K,
 retain the possession or use or enjoyment of such
 movable property;";
- 50 (j) by the substitution for the definition of "ledger fee" of
 the following definition:
 "ledger fee" means a fee charged by a banking
 institution as defined in section 1 (1) of the Banks
 Act, 1965 (Act No. 23 of 1965), for keeping [an]
 55 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
 60 account shows a debit balance or a credit
 balance;";

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- (k) by the insertion after the definition of "ledger fee" of the following definitions:
- 5 "lessee" means any person who leases movable property in terms of a leasing transaction, and includes any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a lessee in respect of a leasing transaction, have passed;
- 10 "lessor" means any person who leases or has leased movable property to a lessee in terms of a leasing transaction, and includes any person to whom, whether by delegation, cession or otherwise, the rights or the rights and obligations of a lessor in respect of a leasing transaction have passed;
- 15 "manager", in relation to a credit card scheme, means a manager referred to in the definition of credit card scheme;"
- (l) by the substitution for the definition of "moneylender" of the following definition:
- 20 "moneylender" means—
- (a) any person who is granting or has granted a loan of a sum of money to a prospective borrower or to a borrower in terms of a money lending transaction; **[or]**
- 25 (b) any person to whom, whether by delegation, cession or otherwise, the rights or the rights and obligations of a moneylender in respect of a money lending transaction have passed; **[and]**
- 30 (c) the holder of an instrument of debt executed in respect of a money lending transaction;
- (d) any manager;"
- (m) by the substitution for the definition of "money lending transaction" of the following definition:
- 35 "money lending transaction" means any transaction which, whatever its form may be, and whether or not it forms part of another transaction, is substantially one of money lending, and includes—
- 40 (a) any agreement in terms of which goods are sold under a condition of repurchase of such goods at a higher price, in which case the lower price at which the goods are sold shall for the purposes of this Act be deemed to be a sum of money lent;
- 45 (b) any transaction under which goods are purchased by or services are rendered to or any amount of cash is obtained by a credit card holder in terms of a credit card scheme, in which case the price at which the goods are so purchased or such services are so rendered or such amount of cash is so obtained shall for the purposes of this Act be deemed to be a sum of money lent by the manager concerned to such credit card holder;
- 50 (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
- 55

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 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;
- 10 (d) any transaction in terms of which a sum of money owing for alterations or improvements to immovable property is to be paid by a debtor 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 of money shall for the purposes of this Act be deemed to be a sum of money lent to the debtor;"
- 15 (n) by the substitution in the definition of "period" for the words preceding paragraph (a) of the following words: "period" means, where the parties to an agreement in connection with a money lending transaction or a credit transaction or a leasing transaction have agreed that the sum of money payable in connection with the transaction—";
- 20 (o) by the insertion after the definition of "period" of the following definition: "present value of book value" means, in relation to a
- 25 leasing transaction, an amount which, if invested on the date of the commencement of such transaction for the duration of the transaction at the annual finance charge rate stipulated in the instrument of debt executed in connection with such transaction, shall equal on the date of expiry of such transaction the book value on such last-mentioned date of the property leased in terms of such transaction;"
- 30 (p) by the substitution for the definition of "principal debt" of the following definition:
- 35 "principal debt" means, in relation to—
- (a) a money lending transaction—
- (i) the cash amount in money actually received by or on behalf of a borrower in terms of the said transaction; plus
- 40 (ii) the costs in respect of stamp duties actually paid or to be paid by the moneylender in connection with the said transaction and which are owing to him by the borrower; plus
- 45 (iii) if the moneylender is authorized thereto in terms of an agreement in writing between himself and the borrower—
- (aa) where the money loan is wholly or partly secured by a mortgage bond over immovable property or a notarial bond over movable property—
- 50 **[(i)] (aaa)** the costs actually paid or to be paid by the moneylender in respect of the preparation, execution and registration of the mortgage bond; **[and**
- 55 **(ii)] (bbb)** taxes, **[and]** other fiscal charges and licence fees and any compulsory charge in respect of any sectional title
- 60

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 scheme to a body corporate constituted in terms of section 28 of the Sectional Titles Act, 1971 (Act No. 66 of 1971), **[and fire insurance premiums]** actually paid or to be paid by the money-lender in respect of the property concerned;
- 10 **(ccc)** premiums actually paid or to be paid by the moneylender to an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943), including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy in terms of which the property concerned is insured against loss or damage caused by fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured;
- 15
- 20
- 25
- 30 **(ddd)** the costs actually paid by the moneylender 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, embodying the money lending transaction in question;
- 35
- 40 **(bb)** premiums actually paid or to be paid by the moneylender to an insurer registered in terms of the Insurance Act, 1943, as agreed between the insured and such insurer in respect of [an insurance] a life policy which is ceded to the moneylender as security for the repayment of the loan; [and]
- 45
- 50 **(cc)** premiums actually paid or to be paid by the moneylender to an insurer registered in terms of the Insurance Act, 1943, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy over movable property [pledged to the moneylender] in terms of which such property is insured against loss or damage caused by fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured and which property serves as security for the repayment of the loan; [or]
- 55
- 60
- 65

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 (dd) premiums actually paid by a money-lender on behalf of a borrower for insurance in terms of the Compulsory Motor Vehicle Insurance Act, 1972 (Act No. 56 of 1972);
- (ee) amounts expended in respect of fiscal charges, stamp and transfer duties; or
- 10 (b) a credit transaction—
- (i) the selling price of movable property or services or, if applicable, the difference between the selling price of movable property or services and the cash amount in money paid or to be paid or the reasonable value, agreed upon, of goods delivered or to be delivered by the credit receiver to the credit grantor for application in reduction of the said selling price; or
- 15 (ii) the difference between the total sum of money, excluding finance charges, charged by the credit grantor for the use or enjoyment of movable property or services and the cash amount in money paid or to be paid or the reasonable value, agreed upon, of goods delivered or to be delivered by the credit receiver to the credit grantor for deduction from the said sum of money; plus
- 20 (iii) the costs in respect of stamp duties actually paid or to be paid by the credit grantor in connection with the said transaction and which are owing to him by the credit receiver; plus
- 25 (iv) if the credit grantor is authorized thereto in terms of an agreement in writing between himself and the credit receiver—
- (aa) where property is pledged under notarial bond or hypothecated under a mortgage bond over immovable property to the credit grantor as security in connection with the transaction, the costs actually paid or to be paid by the credit grantor in respect of the preparation, execution and registration of the bond;
- 30 (bb) premiums actually paid or to be paid by the credit grantor to an insurer registered in terms of the Insurance Act, 1943, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy in terms of which
- 35 **[over]** the property sold and any other property serving as security in connection with the said transaction are insured against loss or damage caused by fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured; **[and]**
- 40 (cc) premiums actually paid or to be paid by the credit grantor to an insurer registered in terms of the Insurance Act, 1943, as agreed between the
- 45
- 50
- 55
- 60
- 65

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- insured and such insurer in respect of a life policy which is ceded to the credit grantor as security in connection with the said transaction;
- 5 (dd) premiums actually paid by a credit grantor on behalf of a credit receiver for insurance in terms of the Compulsory Motor Vehicle Insurance Act, 1972;
- 10 **[(cc)]** (ee) taxes, **[and]** other fiscal charges, and licence **[and other]** fees which may be payable in connection with the said transaction and which were actually paid or to be paid by the credit grantor;
- 15 (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, embodying the credit transaction in question; or
- 20
- 25 (c) a leasing transaction—
- (i) the difference between—
- 30 (aa) the cash price at which the movable property leased in terms of such transaction is normally sold by the lessor on the date on which such transaction is entered into or, where the lessor is not a trader normally selling any such movable property, the reasonable money value, agreed upon between the lessor and the lessee, of such movable property or, when applicable, the money value determined in terms of section 6K in respect of such movable property;
- 35 and
- 40 (bb) the sum of—
- 45 (aaa) the cash amount in money paid or to be paid on the date of such transaction by or on behalf of the lessee to or on behalf of the lessor; and
- 50 (bbb) the reasonable value agreed upon of property delivered or to be delivered by the lessee to the lessor for application in reduction of the cash price, reasonable money value or money value referred to in paragraph
- 55 (i) (aa); and
- (ccc) the present value of the book value of the property leased in terms of such transaction; plus
- 60 (ii) the costs in respect of stamp duties actually paid or to be paid by the lessor in connection with such transaction and owing to him by the lessee; plus
- 65 (iii) if the lessor is authorized thereto in terms of an agreement in writing between himself and the lessee—
- (aa) where property is pledged in terms of a notarial bond or hypothecated

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 under a mortgage bond over immovable property to the lessor as security in connection with such transaction, the costs actually paid or to be paid by the lessor in respect of the preparation, execution and registration of the bond;
- 10 (bb) premiums actually paid or to be paid by the lessor to an insurer registered in terms of the Insurance Act, 1943, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy in terms of which the property leased and any other property serving as security in connection with the said transaction are insured against loss or damage caused by
- 15 fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured;
- 20 (cc) premiums actually paid or to be paid by the lessor to an insurer registered in terms of the Insurance Act, 1943, as agreed between the insured and such insurer in respect of a life policy which is ceded to the lessor as security in connection with the said transaction;
- 25 (dd) premiums actually paid by a lessor on behalf of a lessee for insurance in terms of the Compulsory Motor Vehicle Insurance Act, 1972;
- 30 (ee) taxes, other fiscal charges and licence fees payable in connection with the said transaction actually paid or to be paid by the lessor;
- 35 (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, embodying the leasing transaction in question.”;
- 40
- 45
- 50 (g) by the substitution in the definition of “regular payments” for the words preceding the proviso of the following words:
“‘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.”;
- 55
- 60 (r) by the insertion after the definition of “Republic” of the following definition:
“‘supplier’, in relation to a credit card scheme, means a supplier referred to in the definition of credit card scheme.”;
- 65 (s) by the insertion after the definition of “this Act” of the following definition:
“‘underwriting fee’ means any fee charged by a person in terms of an agreement in writing between such person and any person issuing debentures in terms

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

of which the first-mentioned person undertakes to subscribe to any debentures so issued having an aggregate issued price of not less than R250 000 if such debentures are not subscribed to by any other person, and which fee is charged and payable when all such debentures have been subscribed to."

2. The following section is hereby substituted for section 2 of the principal Act:

Substitution of section 2 of Act 73 of 1968, as amended by section 2 of Act 76 of 1970 and section 2 of Act 62 of 1974.

10 "Maximum annual finance charge rates which may be charged in connection with a money lending transaction, a credit transaction and a leasing transaction.

2. (1) No moneylender shall in connection with any money lending transaction stipulate for, demand or receive finance charges at an annual finance charge rate greater than—

- 15 (a) 18,25% or, if any other percentage, whether greater or smaller, is prescribed by regulation for the purposes of this paragraph, than the percentage so prescribed from time to time, where the total amount of money lent by him to a borrower, including disbursements, recoverable as part of the principal debt, made by him, within any period of three months does not in the aggregate exceed **[two hundred rand] R500** or, if any other sum of money, whether greater or smaller, is prescribed by regulation for the purposes of this paragraph, the sum so prescribed from time to time;
- 20 (b) 15% or, if any other percentage, whether greater or smaller, is prescribed by regulation for the purposes of this paragraph, than the percentage so prescribed from time to time, where the total amount of money lent by him to a borrower, including disbursements, recoverable as part of the principal debt, made by him, within any period of three months exceeds in the aggregate **[two hundred rand] R500** but does not in the aggregate exceed **[four hundred rand] R1 000** or, if any other sum of money, whether greater or smaller, is prescribed by regulation for the purposes of this paragraph, the sum so prescribed from time to time;
- 25 (c) 12% or, if any other percentage, whether greater or smaller, is prescribed by regulation for the purposes of this paragraph, than the percentage so prescribed from time to time, where the total amount of money lent by him to a borrower, including disbursements, recoverable as part of the principal debt, made by him, within any period of three months, exceeds in the aggregate **[four hundred rand] R1 000** or, if any other sum of money, whether greater or smaller, is prescribed by regulation for the purposes of this paragraph, the sum so prescribed from time to time.

55 (2) No credit grantor shall in connection with any credit transaction stipulate for, demand or receive 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.

60 (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.

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

5 **[(3)] (4)** The Minister shall publish tables in the *Gazette* from which may be ascertained—

(a) the annual add-on rate equal to the annual finance charge rate at which finance charges 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;

10 (b) in the case of a leasing transaction, the present value of the book value of the leased property.

15 **[(4)] (5)** Where in connection with a money lending transaction or a credit transaction or a leasing transaction it is agreed that payment of the principal debt and finance charges must be effected in any manner other than by way of regular payments, the annual finance charge rate at which finance charges may be levied, shall be calculated on the balance of the principal debt owing from time to time by the borrower or credit receiver or lessee to the moneylender or credit grantor or lessor.

20 **[(5)] (6)** No moneylender or credit grantor or lessor shall—

25 (a) calculate finance charges 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;

30 (b) in respect of a life policy ceded to a moneylender as security for the repayment of a loan or to a credit grantor or a lessor as security in connection with a credit transaction or a leasing transaction—

35 (i) include in the principal debt, or stipulate for, demand or receive finance charges in respect of premiums paid in advance for more than 12 months at a time by such moneylender or credit grantor or lessor;

40 (ii) pay or undertake to pay premiums, or stipulate for, demand or receive finance charges on premiums paid, on the portion by which the sum payable under such policy exceeds the aggregate amount of the principal debt on the date of the transaction and finance charges thereon for a period of not more than 12 months:

45 Provided that the limitation to the aggregate amount of the principal debt shall not apply to a policy which at the date of cession has a surrender value;

50 (c) in connection with an insurance policy over movable or immovable property and of which the premiums qualify for inclusion in the principal debt of a money lending transaction or a credit transaction or a leasing transaction, pay or undertake to pay, or stipulate for, demand or receive finance charges in respect of, premiums on the portion by which the sum insured under such policy exceeds the reasonable value of the property insured as agreed at the time the transaction was concluded.

55

60

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

[(6)] (7) The provisions of subsection [(5)] (6)

5 (a) shall not be construed as prohibiting the recovery of finance charges according to periods of one month or longer in the case of a money lending transaction in respect of which the period between instalment payments or the period between the date upon which the principal debt was incurred and the date upon which it must be paid, is longer than one month.

10 (8) No lessor shall in respect of a leasing transaction calculate the present value of the book value of the leased property 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 leasing transaction concerned.

15 (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 subject to the provisions of sections 4 and 20 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 moneylender or credit grantor or lessor in respect of 25 any such transaction.

(10) An intermediary shall not in respect of a money lending transaction, a credit transaction or a leasing transaction or in respect of an application by any 30 person to borrow an amount of money in terms of a money lending transaction or to obtain credit in terms of a credit transaction or to lease movable property in terms of a leasing transaction, demand, receive or recover, directly or indirectly, on his own account or 35 on behalf of any person other than the moneylender or credit grantor or lessor concerned, any valuable consideration from the borrower or credit receiver or lessee concerned or from any person so applying.

(11) The provisions of subsection (10) shall not be 40 construed as prohibiting—

(a) a moneylender or a credit grantor or a lessor from paying an intermediary for services rendered by him in connection with any such 45 transaction;

(b) any 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 or any person who is registered as an accountant and auditor in terms of the Public Accountants' and 50 Auditors' Act, 1951 (Act No. 51 of 1951), and who is engaged in public practice as an accountant or auditor or any person falling within such category of persons as the Minister may designate by notice in the *Gazette*, on such conditions 55 as he may specify in such notice, for the purposes of this paragraph from stipulating for, demanding or receiving from a borrower or a credit receiver or a lessee payment not exceeding an amount equal to such percentage as may be 60 prescribed by regulation for the purposes of this paragraph for services rendered by him to such borrower, credit receiver or lessee in connection with the money lending transaction or credit transaction or leasing transaction concerned: Provided that different percentages may be so 65 prescribed in respect of money lending transactions or credit transactions or leasing transactions having different money values;

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 99, 1980

- (c) any person who issued a debenture from remunerating an intermediary who acted on behalf of such person in any negotiation with a subscriber to a debenture so issued.
- 5 (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
 - 10 (b) in respect of such transaction finance charges for more than three months in advance, 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
 - 15 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.”

3. The following section is hereby inserted in the principal Act 20 after section 2:

Insertion of section 2A in Act 73 of 1968.

- 25 “Limitation of finance charges in respect of money lending transactions secured by certain mortgage bonds.
- 30 **2A. (1) If a loan of a sum of money in terms of a money lending transaction is to be secured by a mortgage bond over immovable property and such bond is in terms of an agreement between the moneylender and borrower concerned, to be registered in a deeds registry before such sum of money is to be paid by such moneylender to or on behalf of such borrower, the moneylender shall be entitled to stipulate for, demand or receive finance charges in connection with such money lending transaction—**
- 35 (a) from the date on which such moneylender 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 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 moneylender 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 and the rate recoverable by him from such institution;
 - 40
 - 45
 - 50 (b) from the date on which such sum of money or any portion thereof is paid to or on behalf of the borrower and in respect of such sum or portion, as the case may be, at the annual finance charge rate disclosed in the instrument of debt relating to such money lending transaction.
 - 55

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90; 1980

5 (2) If in any proceedings, whether by way of
provisional sentence, summary judgment or other-
wise, finance charges referred to in subsection (1) are
claimed in respect of the period from the date on
which the loan concerned was approved until the date
on which such loan was secured by a mortgage bond
over immovable property, and the borrower alleges
that the registration of such bond or the payment of
the loan after such registration was effected, was
10 delayed by the moneylender concerned or any person
acting on his behalf, judgment in respect of such
finance charges shall not be granted in such proceed-
ings unless such moneylender satisfies the court that
the said allegations are without any substance.

15 (3) An allegation referred to in subsection (2) shall
not be made in any proceedings referred to in that
subsection unless the borrower concerned objected in
writing with the moneylender concerned within 12
months from the date on which the loan concerned
20 was paid to him or on his behalf, to the delay by such
moneylender of the registration of the mortgage bond
concerned or of the payment of such loan after such
registration.”.

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

25 (a) by the insertion after subsection (2) of the following
subsection:

“(2A) A lessor who transacts leasing transactions in
the normal course of his business, shall, on demand
before the conclusion of any leasing transaction in
connection with which finance charges are or will be
30 payable, furnish separately and distinctly to the prospec-
tive 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
35 determinable, the following particulars:

- (a) The cash price at which the movable property
leased or to be leased, is normally sold by the
lessor on the date on which such transaction is
concluded or, where the lessor is not a trader
normally selling any such movable property, the
reasonable money value, agreed upon between the
lessor and the lessee, of such movable property or,
when applicable, the money value determined in
terms of section 6K in respect of such movable
45 property;
- (b) all other charges, shown separately, forming part or
which will form part of the principal debt;
- (c) the cash amount in money or the reasonable value
of property deducted or to be deducted at the
50 conclusion of the transaction from the cash price,
reasonable money value or money value referred to
in paragraph (a);
- (d) the present value of the book value of the leased
property deducted or to be deducted at the con-
55 clusion of the transaction from the cash price,
reasonable money value or money value referred to
in paragraph (a);
- (e) the book value of the leased property;
- (f) the principal debt, that is, the sum of the amounts
60 referred to in paragraphs (a) and (b) less the sum of
the amounts referred to in paragraphs (c) and (d);
- (g) the amount in rand and cents of the finance
charges;
- 65 (h) the finance charges expressed as an annual finance
charge rate;

Amendment of
section 3 of
Act 73 of 1968,
as amended by
section 3 of
Act 76 of 1970
and section 3 of
Act 62 of 1974.

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- (i) the date with effect from which finance charges are to be paid by the lessee; and
- (j) as the case may be, the date upon which or the number of instalments in which the principal debt together with the finance charges must be paid, the amount of each instalment and the due date of each instalment or the manner in which that date is determined.”;
- (b) by the substitution for subsection (3) of the following subsection:
“(3) The provisions of subsections (1), **[and]** (2) and (2A) shall not apply to or in respect of—
- (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 or a banking institution as defined in section 1 (1) of the Banks Act, 1965 (Act No. 23 of 1965);
- (b) any bond over movable or immovable property which is registered in a deeds registry;
- (c) a debit balance in an account with a banking institution as defined in section 1 (1) of the Banks Act, 1965, out of which withdrawals may be made by cheque or on other instructions of clients; **[and]**
- (d) a money loan given by a life insurer to the owner of a policy in terms of which such insurer is subject to any obligation, where such loan is secured by the pledge of that policy;
- (e) a money loan given by a banking institution as defined in section 1 (1) of the Banks Act, 1965, or a building society registered in terms of the Building Societies Act, 1965 (Act No. 24 of 1965), to any person holding a fixed deposit with such institution or society or to any shareholder of any such society where such loan is secured by the pledge of that deposit or the share concerned; and
- (f) a debenture in respect of which the particulars referred to in subsection (1) are specified in an instrument of debt executed in connection with such debenture by the person who issued such debenture.”;
- (c) by the substitution for subsection (4) of the following subsection:
“(4) Where the particulars referred to in subsection (1), **[or]** (2) or (2A) are furnished in a document which also contains other information, such particulars shall be furnished in writing not less conspicuous than the writing in which such other information is furnished.”;
- (d) by the substitution for subsection (5) of the following subsection:
“(5) The provisions of subsections (1), **[and]** (2) and (2A) shall not be construed as prohibiting any money-lender or **[a]** credit grantor or or lessor from charging a borrower or credit receiver or lessee in respect of a money lending transaction or a credit transaction or a leasing transaction, finance charges at a lesser rate than the annual finance charge rate disclosed in the instrument of debt relating to such a transaction.”;
- (e) by the substitution for subsection (6) of the following subsection:
“(6) Any person who makes or executes or is a party to the making or execution of, or as cessionary or otherwise accepts or holds, an instrument of debt which does not comply with the provisions of subsections (1),

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

[or] (2) or (2A) and (4), knowing that it does not so comply, shall be guilty of an offence.”;

(f) by the substitution for subsection (7) of the following subsection:

“(7) Any person who wilfully makes or executes, or is knowingly a party to the making or execution of, an instrument of debt which contains a statement which is false as to any of the particulars required to be inserted therein by subsection (1), **[or]** (2) or (2A), and any person who utters any such instrument of debt knowing that it contains any such false statement, shall be guilty of an offence.”;

(g) by the substitution for subsection (8) of the following subsection:

“(8) Notwithstanding anything in this section contained, but subject to the provisions of section 5, no instrument of debt shall be deemed to be invalid or defective merely by reason of the fact that it does not comply with any provision of subsection (1), (2), (2A) or (4) of this section.”;

(h) by the insertion after subsection (8) of the following subsection:

“(9) Where separate instruments of debt are concluded by the same moneylender or credit grantor or lessor and the same borrower or credit receiver or lessee in respect of the same money lending transaction or credit transaction or leasing transaction, such separate instruments of debt, including an instrument of debt relating to insurance premiums paid on behalf of a credit receiver or borrower or lessee, shall for the purposes of this Act be deemed to be a single instrument of debt containing the provisions of such separate instruments of debt, and such single instrument of debt shall not include—

- (a) any valuable consideration not specifically included in the principal debt by this Act;
- (b) any finance charges which may not be stipulated for, demanded or received in terms of this Act.”.

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

Insertion of section 3A in Act 73 of 1968.

“Particulars in instrument of debt relating to payment of outstanding principal debt and finance charges before due date.

3A. (1) Subject to the provisions of subsection

(2) every instrument of debt, except a debenture, in terms of which the principal debt and finance charges which are owing by the borrower or credit receiver or lessee concerned, are to be paid over a period in the future in instalments, including finance charges, shall provide the following, namely—

- (a) the period, not exceeding 90 days, or, if any longer period is prescribed by regulation for the purposes of this paragraph, not exceeding the period so prescribed from time to time, which shall lapse from the date on which a borrower or a credit receiver or a lessee in writing notified the moneylender or credit grantor or lessor concerned of his intention to pay the outstanding balance of the principal debt and finance charges thereon in one amount before the due date thereof to such moneylender or credit grantor or lessor, before such borrower or credit receiver or lessee shall be entitled so to pay such outstanding balance and finance charges;
- (b) the minimum period, not exceeding 90 days, which shall lapse after the date of such transaction before any notice referred to in paragraph (a) may be given by or on behalf of a borrower or a credit receiver or a lessee;

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 (c) that any notice referred to in paragraph (a) shall state the date on which the borrower or credit receiver or lessee concerned intends to pay the outstanding balance and finance charges referred to in that paragraph in one amount;
- 10 (d) that, notwithstanding anything to the contrary contained in the instrument of debt concerned, the date stated in accordance with paragraph (c) in a notice referred to in paragraph (a), shall be deemed to be the date on which the outstanding balance of the principal debt concerned and finance charges thereon shall be paid by such borrower or credit receiver or lessee in terms of such instrument of debt:
- 15 Provided that for the purposes of paragraph (a) different periods may be prescribed for transactions of different money values.
- (2) In any agreement in connection with—
- 20 (a) a money lending transaction or a credit transaction where on the date of such transaction the principal debt exceeds R50 000 or such other amount, whether greater or smaller, as may be prescribed by regulation for the purposes of this subsection;
- 25 (b) a leasing transaction, the parties may agree that such transaction shall remain in force and that finance charges be levied until the expiry of the term of such transaction.

6. The following section is hereby substituted for section 4 of the principal Act: Substitution of section 4 of Act 73 of 1968.

35 "Limitation of sum recoverable on default or deferment of payment.

40 4. If a borrower or credit receiver or lessee fails to pay any amount which is owing by him to a moneylender 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 moneylender or a credit grantor or a lessor to defer the payment of an amount which is owing by him as aforesaid to the moneylender or credit grantor or lessor, the moneylender or credit grantor or lessor shall thereupon be entitled to recover from the borrower or credit receiver or lessee an additional amount in 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 which the default continues or the period for which payment is deferred as aforesaid."

50

7. The following section is hereby inserted in the principal Act after section 4: Insertion of section 4A in Act 73 of 1968.

55 "Sum recoverable on expiry of period of notice by moneylender, credit grantor or lessor.

60 4A. For the purposes of section 4 a borrower or a credit receiver or a lessee shall be deemed to have failed to pay an amount which is owing by him to a moneylender or a credit grantor or a lessor in connection with a money lending transaction or a credit transaction or a leasing transaction upon the date on which such amount is payable, if such borrower or credit receiver or lessee—

(a) in accordance with a provision, as contemplated in section 3A (1) (a), in the instrument of debt concerned, in writing notified such moneylender

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5
- (b) or credit grantor or lessor that he intended to pay the outstanding balance of the principal debt and finance charges thereon in one amount before the due date thereof on a date as contemplated in section 3A (1) (c); and
- (b) failed to pay such outstanding balance and finance charges in one amount on such date so contemplated.”

8. The following section is hereby substituted for section 5 of 10 the principal Act: Substitution of section 5 of Act 73 of 1968.

- 15 "Limitation of sum recoverable from borrower, credit receiver or lessee.
5. (1) No moneylender or credit grantor or lessor shall in connection with a money lending transaction or a credit transaction or a leasing transaction obtain judgment for or recover from a borrower or credit receiver or lessee an amount exceeding the sum of—
- (a) the principal debt owing to him by the borrower or credit receiver or lessee;
- 20 (b) in the case of a money loan secured wholly or partly by a mortgage bond over immovable property and if the moneylender is authorized thereto in terms of an agreement between himself and the borrower, any amount actually disbursed by the moneylender after the conclusion of the transaction concerned in respect of the maintenance and repair of and renewal premiums on a fire insurance policy over the said immovable property;
- 25 (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 annual finance charge rate not exceeding the relevant rate prescribed by or in terms of section 2 (1), (2) or (3) or contemplated in section 2A (1) in respect of the money lending transaction or credit transaction or leasing transaction [by section 2 (1) or (2)];
- 30 (d) additional finance charges calculated in the manner prescribed by section 4; [and]
- 35 (e) if judgment is obtained for [all costs actually incurred by him in connection with] the [recovery] payment of the principal debt or [interest] finance charges owing thereon [and which would be recoverable at law from] by the borrower or credit receiver or lessee, legal costs awarded in terms of such judgment: Provided that—
- 40 (i) the court in awarding such legal costs may disregard the provisions of any agreement relating to costs between the parties concerned;
- 45 (ii) such legal costs shall not include any costs incurred by or on behalf of a moneylender or a credit grantor or a lessor before the instructions to institute legal proceedings for the payment of such principal debt or finance charges were given; and
- 50 (f) legal costs actually incurred by him after legal proceedings were instituted by him for the payment of the principal debt or of finance charges owing thereon and where payment of such principal debt or finance charges is made by
- 55
- 60

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

or on behalf of the borrower, credit receiver or lessee concerned without judgment being obtained by virtue of such proceedings.

5 (2) No moneylender or credit grantor or lessor shall in any proceedings against a borrower or credit receiver or lessee in respect of loss, damage or expense alleged to have been incurred in connection with a money lending transaction or a credit transaction or a leasing transaction, obtain judgment for any
10 sum not included in the amount recoverable in respect of such money lending transaction or credit transaction or leasing transaction, as the case may be, under subsection (1).

15 (3) In any proceedings in terms of the Insolvency Act, 1936 (Act No. 24 of 1936), or any other law, no moneylender or credit grantor or lessor shall prove a claim in respect of a money lending transaction or a credit transaction or a leasing transaction for any sum for which in terms of this section he cannot obtain
20 judgment.

(4) For the purposes of subsection (1) (a) and (c) the amount of the principal debt and finance charges owing by a lessee in terms of a leasing transaction, shall be calculated, if applicable, in the manner
25 specified in sections 6E, 6F, 6G, 6H, 6I, 6J and 6K, as the case may be."

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

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

30 "(1) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or credit transaction concluded before the date of commencement of the
35 Limitation and Disclosure of Finance Charges Amendment Act, 1980, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments over a period in the future and the finance charges form part of the said
40 instalments, the borrower or credit receiver shall at all times be entitled to pay any instalment before it is due, and shall, if he pays all instalments still unpaid (not being the final instalment) in one amount, be entitled to a reduction of every instalment not due on the date upon
45 which payment is thus effected, by an amount calculated at the rate of 7,5% per annum on such instalment in respect of the period by which the payment of the said instalment is advanced."

Amendment of section 6 of Act 73 of 1968, as amended by section 4 of Act 76 of 1970.

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

50 "(2) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction concluded before the date of commencement of the
55 Limitation and Disclosure of Finance Charges Amendment Act, 1980, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments over a period in the future and the finance charges form part of the said
60 instalments, the borrower or credit receiver shall, if he enters into an agreement with the moneylender or credit grantor concerned in terms of which the said principal debt and finance charges have as from a stated date to be paid by way of smaller or larger instalments than the

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

instalments agreed upon at the time of the conclusion of the transaction concerned, be entitled, for the purpose of the calculation of the amount still outstanding, to a reduction of every instalment which has to be paid in terms of the first-mentioned agreement but which is not due on the said date, by an amount calculated on the basis prescribed by subsection (1).”;

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

“(3) The provisions of subsection (2) relating to the calculation of the amount still outstanding shall *mutatis mutandis* apply also where a borrower and a moneylender or a credit receiver and a credit grantor agree, as from a fixed date and for the purpose of payment, to treat as a single debt two or more amounts which are owing and have to be paid in instalments as contemplated in the said subsection in respect of principal debt and finance charges in connection with various money lending transactions or credit transactions concluded before the date of commencement of the Limitation and Disclosure of Finance Charges Amendment Act, 1980.”

10. The following sections are hereby inserted in the principal Act after section 6:

Insertion of sections 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 6I, 6J, 6K and 6L in Act 73 of 1968.

25 “Payment of portion of principal debt and finance charges before due date.

30 6A. Subject to the provisions of section 3A a borrower or a credit receiver or a lessee shall be entitled to pay any portion of the principal debt and finance charges—

(a) owing by him in terms of a money lending transaction or a credit transaction or a leasing transaction; and

(b) which are to be paid over a period in the future in instalments, including finance charges, before the due date thereof, but any payment in the said manner of any such portion shall not derogate from any right of such borrower or credit receiver or lessee in terms of the transaction concerned.

35

Consequence of notice relating to payment before due date of outstanding principal debt and finance charges in terms of certain money lending transactions or credit transactions.

40 6B. (1) Where—

(a) the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments, including finance charges, over a period in the future; and

45 (b) such borrower or credit receiver by notice in writing in accordance with a provision, as contemplated in section 3A (1) (a), in the instrument of debt concerned, has notified such moneylender or credit grantor of his intention to pay the outstanding balance of the principal debt and finance charges thereon (not being the final instalment) in one amount before the due date thereof and on or before the date, as contemplated in section 3A (1) (c), stated in such notice,

50 such money lending transaction or credit transaction shall be deemed to be a transaction in respect of which payment of the principal debt and finance charges thereon has to be made in a manner other than by way of regular payments, and such moneylender or credit grantor shall recalculate the finance charges payable in respect of such transaction—

55 (i) in accordance with the provisions of section 2 (5) at the annual finance charge rate provided for in such instrument of debt; and

60

65

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

(ii) as from the date of such transaction until the date on which such borrower or credit receiver intends to pay the said outstanding balance and finance charges in one amount,
5 and the finance charges so recalculated, notwithstanding anything to the contrary contained in such instrument of debt but subject to the provisions of section 4A, shall be the maximum finance charges which may be demanded, received or recovered in
10 respect of such transaction by such moneylender or credit grantor.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* where a borrower or credit receiver pays the outstanding balance of the principal debt and finance charges thereon (not being the final instalment)—

(a) owing by him in connection with a money lending transaction or a credit transaction; and

(b) which in terms of an agreement between himself and the moneylender or credit grantor concerned,
20 have to be paid in instalments, including finance charges, over a period in the future,

before the due date thereof in one amount without notifying in writing such moneylender or credit grantor in accordance with a provision, as contemplated in section 3A (1) (a), in the instrument of debt concerned of his intention so to pay such outstanding balance and finance charges, and the date on which—

(i) such outstanding balance and finance charges are so paid or the minimum period, as contemplated in section 3A (1) (b), provided for in the instrument of debt concerned, has expired, whichever date is the later date, shall be deemed to be the date on which notice was so given; and

(ii) the period, as contemplated in section 3A (1) (a), provided for in the instrument of debt concerned, would have expired if such period had commenced on the applicable date referred to in paragraph (i), shall be deemed to be the date on
40 which such period expired.

Consequence of certain agreement relating to change of amount of instalments payable in terms of certain money lending transactions or credit transactions.
45
50
55
60
6C. (1) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction, not secured by a mortgage bond over immovable property or a notarial bond over movable property, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments, including finance charges, over a period in the future, and such moneylender or credit grantor and such borrower or credit receiver concluded an agreement in terms of which such principal debt and finance charges as from a stated date are to be paid by way of instalments greater or smaller than the instalments agreed upon at the conclusion of such money lending transaction or credit transaction, such money lending transaction or credit transaction shall be terminated as from such date and a new money lending transaction or credit transaction shall be concluded between such moneylender or credit grantor and such borrower or credit receiver as from such date in respect of the balance of such principal debt and finance charges thereon still unpaid on such date.

(2) For the purposes of subsection (1) the balance of the principal debt and finance charges thereon which on the date on which the money lending transaction or credit transaction concerned is terminated in terms of that subsection, are still unpaid in respect of such transaction, shall be calculated in
65

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

accordance with the provisions of section 6B (1) as if—

- 5 (a) such balance and finance charges had been paid in one amount before the due date thereof and on the date on which such transaction was so terminated;
- 10 (b) the date on which such transaction was so terminated, were the date, as contemplated in section 3A (1) (c), stated in a notice referred to in section 6B (1) (b).

15 (3) A moneylender or credit grantor shall not recover finance charges in connection with a money lending transaction or a credit transaction concluded in terms of subsection (1) at an annual finance charge rate exceeding the maximum rate which on the date on which such transaction was concluded, could have been stipulated for, demanded or received in terms of section 2 in respect of such transaction.

20 (4) Any insurance premiums, taxes and other fiscal charges, licence and other fees actually paid or payable by the moneylender or credit grantor concerned in respect of a money lending transaction or a credit transaction terminated under subsection (1), shall be deemed to have been paid or be payable in respect of a money lending transaction or a credit transaction concluded in terms of that subsection.

25 (5) If a money lending transaction or a credit transaction is concluded in terms of subsection (1), the moneylender or the credit grantor shall be entitled to recover from the borrower or credit receiver the costs in respect of stamp duties, taxes and other fiscal charges actually paid or payable in connection with the execution of the instrument of debt in respect of such transaction.

30 (6) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction, secured by a mortgage bond over immovable property or a notarial bond over movable property, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments, including finance charges, over a period in the future, and such moneylender or credit grantor and such borrower or credit receiver concluded an agreement, which shall be in writing, in terms of which such principal debt and finance charges thereon are to be paid as from a stated date by way of instalments greater or smaller than the instalments agreed upon at the conclusion of such money lending transaction or credit transaction, the balance of the principal debt and finance charges thereon still unpaid on such date in respect of such transaction, shall be calculated in accordance with the provisions of section 6B (1) as if—

- 35 (a) such balance and finance charges had been paid in one amount before the due date thereof and on such stated date; and
- 40 (b) such stated date were the date, as contemplated in section 3A (1) (c), stated in a notice, as contemplated in section 3A (1) (a), given in accordance with a provision of the instrument of debt concerned.

45 (7) An agreement concluded in terms of subsection (6) shall contain the following particulars, namely—

- 50 (a) the aggregate amount of the principal debt and finance charges thereon, as calculated in terms of that subsection, still unpaid on the stated date referred to in that subsection;
- 55
- 60
- 65

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- (b) the amount of the new principal debt and finance charges thereon which are to be paid in instalments over a period in the future;
- (c) the period over which the principal debt and finance charges thereon are to be paid;
- (d) the rate at which finance charges are to be calculated with effect from the stated date referred to in that subsection;
- (e) the date on which or the number of instalments in which the principal debt together with the finance charges must be paid, the amount of each instalment, and the due date of each instalment or the manner in which that date is determined.

(8) The provisions of subsections (3), (4) and (5) shall apply *mutatis mutandis* in respect of an agreement concluded in terms of subsection (6).

6D. Where a borrower and a moneylender or a credit receiver and a credit grantor concluded an agreement to treat, as from a stated date and for the purposes of payment, as one debt two or more than two amounts owing and payable in respect of principal debt and finance charges in connection with various money lending transactions or credit transactions, such transactions shall be deemed to have been terminated on such stated date, and thereupon the provisions of section 6C regarding a transaction which has been terminated and the calculation of the outstanding balance of the principal debt and finance charges thereon in respect of a transaction so terminated, shall apply *mutatis mutandis* in respect of any such agreement.

6E. (1) Where the principal debt and finance charges owing by a lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor concerned, to be paid in instalments, including finance charges, over a period in the future, and such lessee and lessor concluded an agreement in terms of which—

- (a) the movable property leased in terms of such transaction is to be replaced by any other movable property; or
- (b) such principal debt and finance charges as from a stated date are to be paid by way of instalments greater or smaller than the instalments agreed upon at the conclusion of such transaction,

such transaction shall be terminated as from the date on which such movable property is replaced or the stated date referred to in paragraph (b), and a new leasing transaction shall be concluded by such lessee and lessor.

(2) If a leasing transaction has been terminated in terms of subsection (1), the principal debt and finance charges owing by the lessee concerned in connection with such transaction shall be calculated in accordance with the provisions of section 6F.

6F. (1) Where a leasing transaction is terminated in terms of section 6E before the expiry of the lease agreed upon at the time of the conclusion of such transaction, such transaction shall be deemed to be a transaction in respect of which payment of the principal debt and of finance charges thereon is to be made in a manner other than by way of regular payments, and the lessor shall not in respect of such transaction demand, receive or recover from the lessee a sum of money which in the aggregate exceeds the difference between—

- (a) the aggregate amount of the principal debt still unpaid on the date on which such transaction is terminated and of finance charges owing thereon, which finance charges shall, as from the date on

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 which such transaction was concluded to the date on which it is terminated, be calculated in accordance with the provisions of section 2 (5) at the annual finance charge rate disclosed in the instrument of debt executed in connection with such transaction; and
- 10 (b) the money value of the movable property leased in terms of the transaction concerned, on the date on which such transaction was terminated, as determined by the lessor in terms of section 6K (1) and (2).
- 15 (2) For the purposes of subsection (1) the principal debt on the date on which the transaction concerned was terminated, shall be calculated as follows, namely—
- (a) the amount of the principal debt stated in the instrument of debt executed in connection with such transaction; plus
- 20 (b) the present value of the book value of the movable property leased in terms of such transaction as calculated by the lessor in determining the amount of the principal debt stated in the instrument of debt executed in connection with such transaction; less
- 25 (c) the total amount, excluding finance charges, paid since the conclusion of such transaction by the lessee to the lessor.

30 Consequence of notice relating to payment before due date of outstanding principal debt and finance charges in terms of certain leasing transactions in the event of termination of such transactions.

35 **6G.** The provisions of section 6F shall apply *mutatis mutandis* where the principal debt and finance charges owing by the lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor, to be paid in instalments, including finance charges, over a period in the future, and the lessee by notice in writing in accordance with a provision, as contemplated in section 3A (1) (a), of the instrument of debt concerned, has notified the lessor of his intention to pay the outstanding balance of the principal debt and finance charges thereon (not being the final instalment) in one amount before the due date thereof on the date, as contemplated in section 3A (1) (c), stated in such notice, and such transaction is to be terminated by such payment.

45 Consequence of payment before due date without notice of outstanding principal debt and finance charges in terms of certain leasing transactions in the event of termination of such transactions.

50 **6H.** The provisions of section 6F shall apply *mutatis mutandis* where the principal debt and finance charges owing by a lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor, to be paid in instalments, including finance charges, over a period in the future, and the lessee pays such principal debt and finance charges (not being the final instalment) in one amount before the due date thereof without notifying the lessor in writing in accordance with a provision, as contemplated in section 3A (1) (a), of the instrument of debt concerned of his intention so to pay such principal debt and finance charges, and such transaction is terminated by such payment: Provided that the date on which—

60 (a) such transaction is terminated or the minimum period, as contemplated in section 3A (1) (b), provided for in the instrument of debt concerned, has expired, whichever date is the later date, shall be deemed to be the date on which notice was so given; and

65 (b) the period, as contemplated in section 3A (1) (a), provided for in the instrument of debt concerned, would have expired if such period had commenced on the applicable date referred to in paragraph (a), shall be deemed to be the date on which such period expired.

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

Consequence of notice relating to payment before due date of 5 outstanding principal debt and finance charges in terms of certain leasing transactions if such transactions not terminated.

15

20

25

30

35

40

6I. (1) Where the principal debt and finance charges owing by a lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor concerned, to be paid in instalments, including finance charges, over a period in the future, and the lessee by notice in writing in accordance with a provision, as contemplated in section 3A (1) (a), of the instrument of debt concerned, has notified the lessor of his intention to pay the outstanding balance of the principal debt and finance charges thereon (not being the final instalment) in one amount before the due date thereof on the date, as contemplated in section 3A (1) (c), stated in such notice, and such transaction is not to be terminated by such payment, such transaction shall be deemed to be a transaction in respect of which payment of the principal debt and finance charges thereon has to be made in a manner other than by way of regular payments, and such lessor shall recalculate the finance charges payable in respect of such transaction—

(a) in accordance with the provisions of section 2 (5) at the annual finance charge rate provided for in such instrument of debt; and

(b) as from the date of such transaction until the date as stated in the notice contemplated in section 3A (1) (c) or the date on which the minimum period, as contemplated in section 3A (1) (b), provided for in the instrument of debt concerned, expired, whichever date is the later date, and the finance charges so recalculated, notwithstanding anything to the contrary contained in such instrument of debt, shall be the maximum finance charges which may be demanded, received or recovered in respect of such transaction by such lessor.

(2) The provisions of section 6K relating to the duties of a lessor shall apply *mutatis mutandis* to a leasing transaction in respect of which the outstanding balance of the principal debt and finance charges thereon have been paid in the manner referred to in subsection (1).

Consequence of payment before due date without notice of outstanding principal debt and finance charges in terms of certain leasing transactions if such transactions not terminated.

45

50

55

60

65

6J. The provisions of section 6I shall apply *mutatis mutandis* where a lessee pays the outstanding balance of the principal debt and finance charges thereon (not being the final instalment)—

(a) owing by him in connection with a leasing transaction; and

(b) to be paid, in terms of an agreement between himself and the lessor concerned, in instalments, including finance charges, over a period in the future,

before the due date thereof in one amount without terminating the transaction and without notifying such lessor in writing in accordance with a provision, as contemplated in section 3A (1) (a), in the instrument of debt concerned of his intention so to pay such balance and finance charges, and the date on which—

(i) such balance and finance charges are so paid or the minimum period, as contemplated in section 3A (1) (b), provided for in the instrument of debt concerned, expired, whichever date is the later date, shall be deemed to be the date on which notice was so given; and

(ii) the period, as contemplated in section 3A (1) (a), provided for in the instrument of debt concerned, would have expired if such period had com-

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

menced on the applicable date referred to in paragraph (i), shall be deemed to be the date on which such period expired.

- Money value
5 of leased pro-
perty at ex-
piry of lease
or termination
of leasing
transaction.
- 10
- 15
- 20
- 25
- 30
- 35
- 40
- 45
- 50
- 55
- 60
- 65
- 6K. (1)** If a leasing transaction in respect of which finance charges are levied, expires or is terminated for reasons other than the failure of the lessee to meet his obligations in terms of such transaction, the lessor shall, notwithstanding anything to the contrary contained in the instrument of debt concerned or in any other agreement between the lessor and lessee—
- (a) not more than 30 days before the date on which such transaction expires or is so terminated, determine the money value, as at that date, of the movable property leased in terms of such transaction; and
- (b) not later than 14 days before that date, in writing notify the lessee of the money value so determined, and thereupon the lessor shall be obliged to sell or, in terms of a new leasing transaction, lease such property to the lessee at such money value if the lessee before that date in writing notified the lessor that he intends to buy or again lease such property.
- (2) Where a leasing transaction is terminated by a lessor on account of the failure of the lessee to meet his obligations in terms of such transaction, the lessor shall determine 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 to the property to enable a valuation to be made.
- (3) If—
- (a) on expiry of the lease 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 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 including finance charges, exceeding such book value, the lessor in terms of such transaction, shall pay to the lessee, after deducting any amount owing by the lessee to the lessor in terms of such transaction, in cash the amount by which the money value so determined or the price or money value, not including finance charges, at which such property is sold or leased to such other person, whichever is the greater, exceeds such book value; or
- (b) a leasing transaction 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 person other than the lessee in terms of such transaction, at a price or money value, not including finance charges, exceeding the money value thereof as determined in terms of subsection (1) or (2), the lessor shall pay to the lessee, after deducting 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

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

5 person exceeds the money value so determined
in terms of subsection (1) or (2):
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.

10 (4) Two or more amounts owing and to be paid by
the same lessee in connection with several leasing
transactions to the same lessor as principal debts and
finance charges, shall not be treated by the lessor as a
single debt.

15 6L. The provisions of sections 6B to 6K shall not
be construed so as to prohibit a moneylender or a
credit grantor or a lessor from recovering any amount
paid in terms of section 5 (1) (b) or any additional
finance charges or legal costs referred to in section 5
20 (1) (d), (e) or (f).

11. The following section is hereby substituted for section 7 of
the principal Act: Substitution of
section 7 of
Act 73 of 1968.

25 "Recovery of amount overpaid in connection with money lending transaction, credit transaction or leasing transaction.
30 7. Any borrower or credit receiver or lessee who in connection with a money lending transaction or a credit transaction or a leasing transaction has paid an amount which exceeds the amount which in terms of this Act could lawfully have been recovered from him in connection with such transaction, may, at any time within a period of three years as from the date of such payment, recover from the person to whom he made the payment, a sum equal to the amount overpaid by him."

12. The following section is hereby inserted in the principal Act
35 after section 9: Insertion of
section 9A in
Act 73 of 1968.

40 "Effect of Act on other statutes.
9A. The provisions of this Act shall not be construed as limiting, amending, repealing or otherwise altering any provision of any other Act or as exempting any person from any duty or obligation imposed by such other Act or prohibiting any person from complying with any provision of such other Act."

13. The following section is hereby substituted for section 10 of
the principal Act: Substitution of
section 10 of
Act 73 of 1968,
as amended by
section 5 of
Act 76 of 1970.

45 "Money-lender, credit grantor or lessor to furnish borrower, credit receiver or lessee
50 with copy of instrument of debt and with certain information.
55 10. (1) A moneylender carrying on the business of money lending or a credit grantor or lessor who, as the case may be, transacts credit transactions or leasing transactions in the normal course of his business shall, within 14 days after the date on which a money lending transaction or a credit transaction or a leasing transaction was concluded, deliver or send through the post to the borrower or credit receiver or lessee, as the case may be, a duplicate or true copy of the instrument of debt executed in connection with the transaction, or if no instrument of debt was so executed, a duplicate or true copy of a document which has been signed, as the case may be, by the moneylender and borrower or the credit grantor and credit receiver or the lessor and lessee or by their duly
60 authorized representatives and wherein the relevant

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

particulars specified in section 3 (1) or (2) or (2A) are set forth:

5 (2) On a written demand by a borrower or a credit receiver or a lessee and against payment of an amount prescribed by the Minister, a moneylender, excluding the holder of a debenture, or credit grantor or lessor shall, at any time during the currency of an agreement in connection with a money lending transaction or a credit transaction or a leasing transaction, furnish to such borrower or credit receiver or lessee or to any person named in such demand, a true copy of the instrument of debt concluded in connection with such transaction and a statement signed by the moneylender or credit grantor or lessor or his duly authorized representative, setting forth—

- 15 (a) the amount of the principal debt which was owing by the borrower or credit receiver or lessee at the time of the conclusion of the transaction;
- 20 (b) if applicable, the sum of any amounts referred to in section 5 (1) (b) actually paid out by the moneylender;
- (c) the amount of the finance charges levied in respect of the transaction;
- 25 (d) the sum of the amounts referred to in paragraphs (a), (b) and (c);
- (e) the annual finance charge rate at which finance charges are payable; **[and]**
- 30 (f) the total amount paid off in respect of the principal debt and finance charges and, if applicable, in respect of the amounts referred to in paragraph (b), and the date and amount of every separate payment made by the borrower or credit receiver or lessee in connection with the transaction:

35 Provided that in the case of a money lending transaction in terms of a credit card scheme the moneylender concerned shall not be obliged to set forth in such statement any information in respect of any loan already repaid in full on the date of the written demand for such statement.

40 (3) A moneylender or a credit grantor or a lessor shall within three months after the date on which the transaction in question has been concluded and thereafter at intervals not exceeding three months or, if payments in terms of such transaction are payable at the end of periods exceeding three months, at the end of every such period, deliver or by post send to the borrower or credit receiver or lessee at the address stated on the agreement or such other address as may be notified in writing by the borrower or credit receiver or lessee from time to time a statement mentioning the total amount already paid in connection with such transaction since the last statement was furnished and the amount then still payable in connection with such transaction: Provided that the provisions of this subsection shall not apply in respect of any bill of exchange, bond, debit balance, money loan or debenture referred to in section 3 (3).

45 (4) If a moneylender or a credit grantor or a lessor to whom a demand has been made in terms of subsection (2), fails without reasonable cause to comply therewith within seven days after the demand has been received by him, he shall be guilty of an offence.

65 **[(4)](5)** The provisions of subsection (1) shall not apply to or in respect of—

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 (a) a money lending transaction or a credit transaction or a leasing transaction where the obligation of the borrower or credit receiver or lessee, as the case may be, is secured wholly by a bond over movable or immovable property registered in a deeds registry;
- 10 (b) a debit balance in an account with a banking institution as defined in the Banks Act, 1965 (Act No. 23 of 1965), from which withdrawals may be made by cheque;
- (c) a money lending transaction where the borrower is a banking institution aforesaid."

14. The following section is hereby substituted for section 11 of the principal Act: Substitution of section 11 of Act 73 of 1968.

15 "Legal proceedings for recovery of debt incurred in connection with a money lending transaction, a credit transaction or a leasing transaction.

20 11. If in any proceedings, whether by way of provisional sentence, summary judgment or otherwise, for the recovery of a debt in pursuance of a money lending transaction or a credit transaction or a leasing transaction, the defendant alleges that payment of finance charges is claimed by, or has been made to, the plaintiff at a rate exceeding the maximum annual finance charge rate allowed by this Act, and the defendant requests that the plaintiff be called as a witness to prove his claim, no judgment shall be granted in such proceedings until the court has afforded the defendant or his legal representative an opportunity to examine the plaintiff in regard to his claim unless it appears to such court that such examination is impracticable or that the defendant's allegation is *prima facie* without foundation."

25

30

15. The following section is hereby inserted in the principal Act after section 11: Insertion of section 11A in Act 73 of 1968.

35 "Legal proceedings for recovery of costs for repair or maintenance of leased property.

11A. A lessor shall not demand or receive any costs incurred by him in connection with the repair or maintenance of movable property leased in terms of a leasing transaction, unless such costs are reasonable and were incurred in terms of an agreement in writing between him and the lessee concerned."

16. Section 12 of the principal Act is hereby repealed. Repeal of section 12 of Act 73 of 1968.

40 17. Section 13 of the principal Act is hereby amended— Amendment of section 13 of Act 73 of 1968.

- (a) by the substitution for subsection (1) of the following subsection:
 " (1) An inspector appointed under section 2 of the Inspection of Financial Institutions Act, 1962 (Act No. 68 of 1962), 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";
 - (b) by the substitution for subsection (3) of the following subsection:
 " (3) For the purposes of the application of the provisions of the Inspection of Financial Institutions Act, 1962, to an inspection under this section, any reference in that Act to a financial institution shall be construed as a reference to a moneylender or a credit grantor or a lessor and any reference therein to the registrar shall be construed as a reference to the Registrar."
- 45
- 50
- 55

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

18. The following section is hereby substituted for section 14 of the principal Act:

Substitution of section 14 of Act 73 of 1968.

5 "Furnishing of information to Registrar. 14. The Registrar may at any time require any moneylender or credit grantor or lessor to furnish him with any information, duly certified as correct by **[an auditor]** any person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), if the Registrar requires such certification, relating to any of such moneylender's money lending transactions or credit grantor's credit transactions or lessor's leasing transactions, and if the moneylender or credit grantor or lessor fails to furnish the Registrar within 30 days after receipt of a written request from the Registrar, or within such further period thereafter as the Registrar may allow, with any information demanded by the Registrar, such moneylender or credit grantor or lessor shall be guilty of an offence."

19. Section 15 of the principal Act is hereby amended—

Amendment of section 15 of Act 73 of 1968, as substituted by section 4 of Act 62 of 1974.

20 (a) by the substitution for the words preceding paragraph (a) of the following words:

"The provisions of this Act, as amended by the Limitation and Disclosure of Finance Charges Amendment Act, 1980, shall not apply to—";

25 (b) by the substitution for paragraph (a) of the following paragraph:

30 "(a) any money lending transaction or any credit transaction or any leasing transaction entered into before, or any instrument of debt existing at, the commencement of **[this]** that Amendment Act: Provided that the said provisions, so amended, shall apply to or in respect of any increase in an existing principal debt or the renewal of every such transaction or instrument effected on or after the date of commencement of **[this]** that Amendment Act;";

(c) by the deletion of paragraph (b);

(d) by the addition of the following paragraphs:

40 "(f) a sum of money deposited with or lent to a banking institution as defined in section 1 (1) of the Banks Act, 1965 (Act No. 23 of 1965), or a building society registered in terms of the Building Societies Act, 1965 (Act No. 24 of 1965);

45 (g) a money lending transaction or a credit transaction or a leasing transaction in terms of which the principal debt exceeds, on the date on which such transaction is entered into, R100 000 or any such other amount, whether greater or smaller, as may be prescribed by regulation for the purposes of this paragraph, or in terms of which the principal debt, on the date on which such transaction is entered into, together with the aggregate amount of the principal debt owing on that date by the same borrower or credit receiver or lessee to the same moneylender or credit grantor or lessor in respect of another transaction or other transactions of the same kind, exceeds R100 000 or the amount so prescribed;

60 (h) a leasing transaction—

(i) which expires, within three months from the date of the conclusion of such transaction, in

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1980

Act No. 90, 1980

- 5 (ii) which is not renewed by the lessor on expiry of the lease agreed upon at the conclusion of such transaction; and
- 10 (iii) in respect of which the principal debt and finance charges thereon are to be paid by the lessee to the lessor before or on the date of expiry of the lease referred to in subparagraph (ii);
- (i) a debenture quoted on a stock exchange in the Republic.”.

20. The following section is hereby inserted in the principal Act after section 18:

Insertion of section 18A in Act 73 of 1968.

- 15 “Statement of question of law for opinion of Supreme Court. 18A. (1) If a question of law arises between the Registrar and any other person concerning the application of any provision of this Act to any money lending transaction or credit transaction or leasing transaction to which such person is a party, the Registrar or such person who is a party to the transaction may state such question of law in the form of a special case for the opinion of any division of the Supreme Court of South Africa having jurisdiction, and shall transmit that special case to the registrar of that court.
- 20 (2) A question of law referred to in subsection (1) may be argued before the court in question and such court may call for such further information as it may deem necessary.
- 25 (3) Any person who is a party to the transaction in question and the Registrar shall be entitled to appear at the arguing of the question of law concerned.
- 30 (4) The court may give such opinion as it may deem fit in respect of the special case, as supplemented by the information referred to in subsection (2), if any, and may make such order as to the costs of the proceedings before it, as it may deem fit.
- 35 (5) The Registrar or any person who is a party to the transaction concerned, shall have a right of appeal to the appellate division of the Supreme Court against an opinion referred to in subsection (4).”.
- 40

21. The following long title is hereby substituted for the long title of the principal Act:

Substitution of long title of Act 73 of 1968.

“ACT

- 45 To provide for the limitation and disclosure of finance charges levied in respect of money lending transactions, **[and]** credit transactions and leasing transactions and for matters incidental thereto; and to repeal the Usury Act, 1926.”.

50 22. (1) This Act shall be called the Limitation and Disclosure of Finance Charges Amendment Act, 1980, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Short title and commencement.

55 (2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.