

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 uneven numbered pages as the other language is printed on even numbered pages.



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1967.

30 September 1988

No. 1967.

30 September 1988

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

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

No. 100 van 1988: Woekerwysigingswet, 1988.

No. 100 of 1988: Usury Amendment Act, 1988.

## USURY AMENDMENT ACT, 1988

Act No. 100, 1988

## 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 Usury Act, 1968, so as to further regulate the application of the Act in respect of credit transactions and leasing transactions; to extend the particulars to be stated in instruments of debt; to regulate the recovery and disclosure of finance charges where a variable or non-variable finance charge rate is agreed upon at the conclusion of a contract; to provide for the recovery of certain moneys not permitted by section 5 of the Act; to grant to the Minister the power to exempt certain credit transactions and leasing transactions from the application of the Act; and to increase certain penalties; and to provide for matters connected therewith.

(English text signed by the State President.)  
(Assented to 16 September 1988.)

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

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

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

(a) by the substitution for the definition of "credit transaction" of the following definition:

10        "'credit transaction' means any transaction, whatever its form may be, and whether or not it forms part of another transaction, by which—

15            (a) a credit grantor [and a credit receiver agree that the credit grantor sell or supply] sells or supplies to [the] a credit receiver movable property or services 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

20            (b) a credit grantor [and a credit receiver agree that the credit grantor transfer or grant] transfers or grants to [the] a credit receiver the use or enjoyment of movable property or services 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  
25            at the time of the conclusion of the transaction that the debtor, or any person on his behalf, shall at no stage during the period which the use or enjoyment of movable property is granted to him or thereafter, acquire ownership of such property and that after the

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- expiration of the said period, he shall not retain the possession, use or enjoyment of the property concerned];”;
- (b) by the addition of the following paragraph to the definition of “finance charges”:
- 5 “(g) any amount or costs referred to in section 5A (1) (a) or (c);”;
- (c) by the substitution for the definition of “leasing transaction” of the following definition:
- “leasing transaction’ means any transaction, whatever its form may be, and whether or not it forms part of another transaction, by which—
- 10 (a) 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 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
- 15 any person on his behalf shall at any stage during or after the expiry of the lease or after the termination of the 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 of such movable property]; and
- 20 (b) the amount which is owing or will be owed by a lessee to a lessor in connection with a transaction referred to in paragraph (a), is payable or will be payable after the date of the conclusion of the said transaction;”;
- (d) by the insertion of the following definition after the definition of “money lending transaction”:
- 25 “‘non-variable finance charge rate’ means a single annual finance charge rate agreed upon at the conclusion of a money lending transaction, credit transaction or leasing transaction and which remains unaltered for the whole duration of the transaction concerned;”;
- 30 (e) by the substitution for subparagraph (aa) of paragraph (c) (i) of the definition of “principal debt” of the following subparagraph:
- “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
- 35 selling such movable property, the [reasonable money] market 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; and”;
- (f) by the substitution for subparagraph (bbb) of paragraph (c) (i) (bb) of the definition of “principal debt” of the following paragraph:
- 40 “(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] market value or money value referred to in paragraph (i) (aa); and”;
- 45 (g) by the substitution for the definition of “this Act” of the following definition:
- “‘this Act’ includes the regulations and any notice issued thereunder;”;
- and
- (h) by the insertion of the following definition after the definition of “underwriting fee”:
- 50 “‘variable finance charge rate’ means a single finance charge rate agreed upon at the conclusion of a money lending transaction, credit transaction or leasing transaction, and which may be altered during the duration of the transaction concerned;”;

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

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

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“(9) Save in respect of a debit balance in a cheque account with a banking institution as defined in section 1 (1) of the Banks Act, 1965 (Act No. 23 of 1965), **[and a bond over movable or immovable property which is registered in a deeds registry]** and subject to the provisions of sections 4, **[and] 5 and 5A**, 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 any such transaction or by his authorized representative].”**

## 10 Insertion of section 2B in Act 73 of 1968

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

“**Limitation of finance charge rate at conclusion of contract**

15 **2B. (1) No moneylender, credit grantor or lessor shall conclude a money lending transaction, credit transaction or leasing transaction in connection with which finance charges are stipulated for, demanded or received at any other rate than a variable finance charge rate or a non-variable finance charge rate.**

20 **(2) (a) If a moneylender, credit grantor or lessor and a borrower, credit receiver or lessee have at the conclusion of a money lending transaction, credit transaction or leasing transaction agreed in accordance with the provisions of this Act upon a non-variable finance charge rate, the moneylender, credit grantor or lessor may recover finance charges at the rate so agreed upon.**

25 **(b) The provisions of paragraph (a) shall also apply to a money lending transaction, credit transaction or leasing transaction already concluded at the commencement of the Usury Amendment Act, 1988.**

30 **(3) If a moneylender, credit receiver or lessee has at the conclusion of a money lending transaction, credit transaction or leasing transaction agreed upon a variable finance charge rate, the moneylender, credit grantor or lessor may not, subject to the provisions of section 3 (10), for any period during the duration of the transaction concerned stipulate for, demand or receive finance charges at an annual finance charge rate exceeding the relevant rate determined for that period in terms of section 2 (1), (2) or (3) in respect of the transaction concerned.**

35 **Amendment of section 3 of Act 73 of 1968, as amended by section 3 of Act 76 of 1970, section 3 of Act 62 of 1974, section 4 of Act 90 of 1980, section 4 of Act 42 of 1986 and section 3 of Act 62 of 1987**

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

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

50 **(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] market 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;**

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- [(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 conclusion of the transaction from the cash price, **[reasonable money]** market 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 conclusion of the transaction from the cash price, **[reasonable money]** market value or money value referred to in paragraph (a);
- (e)** the book value of the leased property;
- (f)** in so far as the same is known and determinable—
- (i)** all other charges forming part or which will form part of the principal debt;
- [(f)] (ii)** the principal debt, that is, the sum of the amounts referred to in **[paragraphs]** paragraph (a) and **[(b)]** subparagraph (i) less the sum of the amounts referred to in paragraphs (c) and (d);
- [(g)] (iii)** the amount in rand and cents of the finance charges calculated at the annual finance charge rate stated in **[paragraph (h)]** subparagraph (iv);
- [(h)] (iv)** the annual finance charge rate;
- [(i)] (v)** the date with effect from which finance charges are to be paid by the lessee; and
- [(j)] (vi)** 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 the date is determined.”;
- (b)** by the deletion of paragraph (b) of subsection (3); and
- (c)** by the addition of the following subsection:
- “(10) If agreement is reached upon a variable finance charge rate in terms of the provisions of section 2B (3), notice in writing shall be given by the moneylender, credit grantor or lessor to the borrower, credit receiver or lessee of any increase in such rate, which date of increase shall not be less than seven days after the date of the notice, before finance charges may be recovered in terms of the increased finance charge rate.”.

## Insertion of section 5A in Act 73 of 1968

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

“Recovery of certain moneys not permitted by section 5

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- 5A. (1)** In addition to the amounts which a moneylender, credit grantor or lessor is entitled to obtain judgement for or recover under section 5, he may, under a mortgage on immovable property or on any right to such property, or under any subsequent written agreement under the mortgage, obtain judgment for or recover the following amounts, namely—
- (a)** any amount disbursed by the moneylender, credit grantor or lessor on behalf of the borrower, credit receiver or lessee in respect of—
- (i)** the installation of sewerage on the property or the property to which the right is attached;
- (ii)** the provision of electricity or water on the property or the property to which the right is attached;
- (iii)** the cost incurred in converting such property from leasehold to freehold;
- (iv)** the cost of the division of the property in accordance with a sectional plan in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986); and
- (v)** rates, taxes and licence fees in respect of the property or right;

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- (b) finance charges on any amount referred to in paragraph (a) at an annual finance charge rate not exceeding the rate at which finance charges are payable on the principal debt which is secured by the mortgage; and
- 5 (c) legal costs incurred by the moneylender, credit grantor or lessor in respect of legal proceedings instituted against a borrower, credit receiver or lessee, and also against a mortgagor if the borrower, credit receiver or lessee is not the mortgagor, for the recovery of any amount or charges referred to in paragraph (a) or (b).
- 10 (2) The provisions of sections 5 (2) and (3) and 6L shall *mutatis mutandis* apply to any amount recoverable in terms of subsection (1).
- (3) The provisions of subsections (1) and (2) shall also apply to a money lending transaction, credit transaction or leasing transaction already concluded at the commencement of the Usury Amendment Act, 15 1988.”.

## Substitution of section 6L of Act 73 of 1968, as inserted by section 10 of Act 90 of 1980

6. The following section is hereby substituted for section 6L of the principal Act:

## “Position regarding recovery of additional finance charges and other costs

20 6L. The provisions of section 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 5A (1) (a) or any additional finance charges or legal costs referred to in section 5 (1) (d), (e) or (f) or 5A (1) (b) or (c).”.

## Amendment of section 10 of Act 73 of 1968, as substituted by section 13 of Act 90 of 25 1980

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

- (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:  
 30 “if applicable, the sum of any amounts referred to in section 5 (1) (b) or 5A (1) actually paid out [by the moneylender];” and
- (b) by the substitution for the proviso to subsection (3) of the following proviso:  
 “Provided that the provisions of this subsection shall not apply in respect of any bill of exchange, [bond] debit balance, money loan or debenture referred to in section 3 (3), or any transaction referred to in subsection 5 (a).”.
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## Insertion of section 15A in Act 73 of 1968

8. The following section is hereby inserted in the principal Act after section 15:

## “Exemptions by Minister

40 15A. The Minister may from time to time by notice in the Gazette exempt categories of credit transactions or leasing transactions from any of or all the provisions of this Act on such conditions and to such extent as he may deem fit, and may at any time in like manner revoke or amend any such exemption.”.

## Substitution of section 17 of Act 73 of 1968

- 45 9. The following section is hereby substituted for section 17 of the principal Act:

## “Penalties

50 17. Any person who contravenes any provision of this Act or fails to comply with any provision of this Act with which it is his duty to comply, shall be guilty of an offence and liable on conviction to a fine not exceeding [one] ten thousand rand or to imprisonment for a period not

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exceeding **[two]** three years or to both such fine and such imprisonment.”.

**Short title and commencement**

10. This Act shall be called the Usury Amendment Act, 1988, and shall come into  
5 operation on a date to be fixed by the State President by proclamation in the *Gazette*.