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KANTOOR VAN DIE STAATSPRESIDENT

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:—

No. 100 van 1988: Woekerwysigingswet, 1988.

STATE PRESIDENT'S OFFICE

No. 1967.

30 September 1988

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

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

Wet No. 100, 1988

WOEKERWYSIGINGSWET, 1988

ALGEMENE VERDUIDELIKENDE NOTA:

- I** Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
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- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.
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WET

Tot wysiging van die Woekerwet, 1968, ten einde die toepassing van die Wet ten opsigte van krediettransaksies en huurtransaksies verder te reël; die besonderhede wat in skuldkaktes vermeld moet word, uit te brei; die verhaal en bekendmaking van finansieringskoste te reël waar by kontraksluiting op 'n wisselende en nie-wisselende finansieringskostekoers ooreengekom word; voorsiening te maak vir die verhaal van sekere gelde wat nie deur artikel 5 van die Wet veroorloof word nie; aan die Minister die bevoegdheid te verleen om sekere krediettransaksies en huurtransaksies van die toepassing van die Wet vry te stel; en sekere strawwe te verhoog; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 16 September 1988.)*

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 73 van 1968, soos gewysig deur artikel 1 van Wet 76 van 1970, artikel 1 van Wet 62 van 1974, artikel 1 van Wet 90 van 1980, artikel 1 van Wet 42 van 1986 en artikel 1 van Wet 62 van 1987

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1. Artikel 1 van die Woekerwet, 1968 (hieronder die Hoofwet genoem), word hierby gewysig—
- (a) deur die volgende paragraaf by die omskrywing van "finansieringskoste" te voeg:
“(g) 'n bedrag of koste bedoel in artikel 5A (1) (a) of (c) nie;”;
 - (b) deur die omskrywing van "hierdie Wet" deur die volgende omskrywing te vervang:
“hierdie Wet" ook die regulasies en enige kennisgewing daarkragtens uitgereik;”;
 - (c) deur subparagraaf (aa) van paragraaf (c) (i) van die omskrywing van "hoofskuld" deur die volgende subparagraaf te vervang:
“(aa) die kontantprys waarteen die roerende goed wat ingevolge bedoelde transaksie verhuur word normaalweg deur die verhuurder op die datum waarop bedoelde transaksie aangegaan word, verkoop word of, indien die verhuurder nie 'n handelaar is wat normaalweg enige sodanige roerende goed verkoop nie, die [redelege geldwaarde] markwaarde van daardie roerende goed [soos ooreengekom deur die verhuurder en die huurder] of, wanneer toepaslik, die geldwaarde wat ingevolge artikel 6K ten opsigte van sodanige roerende goed bepaal is; en”;
 - (d) deur subparagraaf (bbb) van paragraaf (c) (i) (bb) van die omskrywing van "hoofskuld" deur die volgende subparagraaf te vervang:
“(bbb) die ooreengekome redelege waarde van goedere wat deur die

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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.*)

BE 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—

(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

(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 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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- huurder aan die verhuurder gelewer is of gelewer moet word vir aanwending ter vermindering van die kontantprys, **[redelike geldwaarde]** markwaarde of geldwaarde bedoel in paragraaf (i) (aa); en;
- (e) deur die omskrywing van "huurtransaksie" deur die volgende omskrywing te vervang:
 "huurtransaksie" 'n transaksie, in watter vorm dit ook al is, en ongeag of dit deel uitmaak van 'n ander transaksie of nie, waarby—
- (a) 'n verhuurder roerende goed aan 'n huurder verhuur **[teen betaling deur die huurder aan die verhuurder van 'n bepaalde of bepaalbare som geld op 'n bepaalde of bepaalbare toekomstige datum of in die geheel of gedeeltelik in paaiemonte oor 'n tydperk in die toekoms, maar nie ook 'n transaksie nie waarby ten tyde van die aangaan van die transaksie ooreengekom word dat die skuldenaar of iemand namens hom, op enige tydstip gedurende of na verstryking van die huurtermyn of na die beëindiging van die transaksie eienaar van daardie roerende goed word of na sodanige verstryking of beëindiging, behalwe in die omstandighede bedoel in artikel 6K, die besit of gebruik of genot van daardie roerende goed behou]; en**
- (b) die bedrag wat deur die huurder aan die verhuurder in verband met 'n transaksie bedoel in paragraaf (a) verskuldig is of sal word, na die datum waarop bedoelde transaksie aangegaan is, betaalbaar is of sal word;"
- (f) deur die omskrywing van "krediettransaksie" deur die volgende omskrywing te vervang:
 "krediettransaksie" 'n transaksie, in watter vorm dit ook al is, en ongeag of dit deel uitmaak van 'n ander transaksie of nie, waarby—
- (a) 'n kredietgiver **[en 'n kredietopnemer ooreenkom dat die kredietgiver]** roerende goed of dienste aan 'n kredietopnemer verkoop of verskaf teen betaling deur die kredietopnemer aan die kredietgiver van 'n **[bepaalde of bepaalbare]** geldsom **[op 'n bepaalde of bepaalbare toekomstige datum of in die geheel of gedeeltelik in paaiemonte oor 'n tydperk in die toekoms]; of**
- (b) 'n kredietgiver **[en 'n kredietopnemer ooreenkom dat die kredietgiver]** die gebruik of genot van roerende goed of dienste aan **[die]** 'n kredietopnemer oordra of verskaf teen betaling deur die kredietopnemer aan die kredietgiver van 'n **[bepaalde of bepaalbare]** geldsom **[op 'n bepaalde of bepaalbare toekomstige datum of in die geheel of gedeeltelik in paaiemonte oor 'n tydperk in die toekoms, maar nie ook 'n transaksie nie waarby, ten tyde van die aangaan van die transaksie, ooreengekom word dat die skuldenaar, of iemand namens hom, op geen tydstip gedurende die tydperk waartydens die gebruik of genot van roerende goed aan hom afgestaan is of daarna, eiendomsreg op daardie goed verkry nie en dat hy, na verloop van bedoelde tydperk, nie die besit, gebruik of genot van die betrokke goed mag behou nie];**"
- (g) deur die volgende omskrywing na die omskrywing van "Minister" in te voeg:
"nie-wisselende finansieringskostekoers" 'n enkele finansieringskostekoers per jaar waarop by die sluiting van 'n geldleningstransaksie, krediettransaksie of huurtransaksie ooreengekom is en wat vir die volle duur van die betrokke transaksie onveranderd bly;"
- (h) deur die volgende omskrywing by te voeg:
"wisselende finansieringskostekoers" 'n enkele finansieringskostekoers per jaar waarop by die sluiting van 'n geldleningstransaksie, krediettransaksie of huurtransaksie ooreengekom is en wat tydens die duur van die betrokke transaksie verander kan word.".

Wysiging van artikel 2 van Wet 73 van 1968, soos vervang deur artikel 2 van Wet 90 van 1980 en gewysig deur artikel 2 van Wet 42 van 1986 en artikel 2 van Wet 62 van 1987

2. Artikel 2 van die Hoofwet word hierby gewysig deur subartikel (9) deur die volgende subartikel te vervang:

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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:
- 10 “‘leasing transaction’ means any transaction, whatever its form may be, and whether or not it forms part of another transaction, by which—
- (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 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;”;
- 25 (d) by the insertion of the following definition after the definition of “money lending transaction”:
- “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 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”;
- 35 (f) by the substitution for subparagraph (bbb) of paragraph (c) (i) (bb) of the definition of “principal debt” of the following paragraph:
- “(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”;
- 40 (g) by the substitution for the definition of “this Act” of the following definition:
- ““this Act” includes the regulations and any notice issued thereunder;”;
- 45 (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) Behalwe ten opsigte van 'n debetsaldo in 'n tjekrekening by 'n bankinstelling soos omskryf in artikel 1 (1) van die Bankwet, 1965 (Wet No. 23 van 1965), [en 'n verband oor roerende of onroerende goed wat in 'n akteskantoor geregistreer is] en behoudens die bepalings van artikels 4, [en] 5 en 5A, beding, eis of ontvang niemand ten opsigte van 'n geldleningstransaksie of 'n krediettransaksie of 'n huurtransaksie van 'n geldopnemer of kredietopnemer of huurder finansieringskoste wat nie vermeld is in 'n skuldakte [wat deur die gelduitlener of kredietgewer of verhuurder of deur sy gemagtigde verteenwoordiger, ten opsigte van so 'n transaksie verly is] nie.".

Invoeging van artikel 2B in Wet 73 van 1968

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3. Die volgende artikel word hierby in die Hoofwet na artikel 2A ingevoeg:

"Beperking op finansieringskostekoers by kontraksluiting"

2B. (1) 'n Gelduitlener, kredietgewer of verhuurder sluit nie 'n geldleningstransaksie, krediettransaksie of huurtransaksie in verband waarmee finansieringskoste beding, geëis of ontvang word teen 'n ander koers as 'n wisselende finansieringskostekoers of 'n nie-wisselende finansieringskostekoers nie.

(2) (a) Indien 'n gelduitlener, kredietgewer of verhuurder en 'n geldopnemer, kredietopnemer of huurder by die sluiting van 'n geldleningstransaksie, krediettransaksie of huurtransaksie ooreenkomsdig die bepalings van hierdie Wet op 'n nie-wisselende finansieringskostekoers ooreengekom het, mag die gelduitlener, kredietgewer of verhuurder finansieringskoste verhaal teen die koers waarop aldus ooreengekom is.

(b) Die bepalings van paragraaf (a) is ook van toepassing op 'n geldleningstransaksie, krediettransaksie of huurtransaksie wat voor die inwerkingtreding van die Woekerwysigingswet, 1988, gesluit is.

(3) Indien 'n gelduitlener, kredietgewer of verhuurder en 'n geldopnemer, kredietopnemer of huurder by die sluiting van 'n geldleningstransaksie, krediettransaksie of huurtransaksie op 'n wisselende finansieringskostekoers ooreengekom het, mag die gelduitlener, kredietgewer of verhuurder, behoudens die bepalings van artikel 3 (10), nie vir enige tydperk tydens die duur van die betrokke transaksie finansieringskoste beding, eis of ontvang nie teen 'n hoër finansieringskostekoers per jaar as die toepaslike koers wat ten opsigte van die betrokke transaksie vir daardie tydperk ingevolge artikel 2 (1), (2) of (3) bepaal is."

Wysiging van artikel 3 van Wet 73 van 1968, soos gewysig deur artikel 3 van Wet 76 van 1970, artikel 3 van Wet 62 van 1974, artikel 4 van Wet 90 van 1980, artikel 4 van Wet 42 van 1986 en artikel 3 van Wet 62 van 1987

4. Artikel 3 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2A) deur die volgende subartikel te vervang:

"(2A) 'n Verhuurder wat in die normale loop van sy besigheid huurtransaksies aangaan of sy gemagtigde verteenwoordiger verstrek, op versoek voordat 'n huurtransaksie [in verband waarmee finansieringskoste betaalbaar is of betaalbaar sal wees] aangegaan word, afsonderlik, uitdruklik en skriftelik aan die voornemende huurder; en, hetsy so 'n versoek gedoen word al dan nie, vermeld afsonderlik en uitdruklik in elke skuldakte wat in verband met so 'n transaksie verly word [vir sover dit bekend en bepaalbaar is], die volgende besonderhede:

(a) Die kontantprys waarteen die roerende goed wat verhuur word of gaan word normaalweg deur die verhuurder op die datum waarop daardie transaksie aangegaan word, verkoop word of, indien die verhuurder nie 'n handelaar is wat normaalweg sodanige roerende goed verkoop nie, die [redelike geldwaarde] markwaarde van daardie roerende goed [soos ooreengekom deur die verhuurder en die huurder] of, wanneer toepaslik, die geldwaarde wat ingevolge artikel 6K ten opsigte van daardie roerende goed bepaal is;

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5 “(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:

45 “(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, 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) alle ander vorderings, afsonderlik vermeld, wat deel van die hoofskuld uitmaak of deel van die hoofskuld sal uitmaak;]
- (c) die kontantbedrag geld of die redelike waarde van eiendom wat by die aangaan van die transaksie teen die kontantprys, [redelike geldwaarde] markwaarde, of geldwaarde bedoel in paragraaf (a) verreken is of verreken sal word;
- (d) die teenswoordige waarde van die boekwaarde van die verhuurde goed wat by die aangaan van die transaksie teen die kontantprys, [redelike geldwaarde] markwaarde of geldwaarde bedoel in paragraaf (a) verreken is of verreken sal word;
- (e) die boekwaarde van die verhuurde goed;
- (f) vir sover dit bekend en bepaalbaar is—
- (i) alle ander vorderings wat deel van die hoofskuld uitmaak of deel van die hoofskuld sal uitmaak;
 - (ii) die hoofskuld, dit wil sê, die som van die bedrae bedoel in [paragraaf (a) en [(b)] subparagraaf (i) min die som van die bedrag bedoel in paragrawe (c) en (d);
 - (iii) die bedrag in rand en sente van die finansieringskoste bereken teen die finansieringskostekoers per jaar in [paragraaf (h)] subparagraaf (iv) vermeld;
 - (iv) die finansieringskostekoers per jaar;
 - (v) die datum met ingang waarvan finansieringskoste deur die huurder betaal moet word; en
 - (vi) na gelang van die geval, die datum waarop of die getal paaiemende waarin die hoofskuld tesame met die finansieringskoste betaal moet word, die bedrag van elke paaiement en die vervaldatum van elke paaiement of die wyse waarop dié datum bepaal word.”;
- (b) deur paragraaf (b) van subartikel (3) te skrap; en
- (c) deur die volgende subartikel by te voeg:
- “(10) Indien op 'n wisselende finansieringskostekoers ingevolge die bepalings van artikel 2B (3) ooreengekom word, moet skriftelik kennis van enige verhoging van sodanige koers, watter datum van verhoging nie minder as sewe dae na die datum van die kennisgewing mag wees nie, deur die gelduitlener, kredietgewer of verhuurder aan die geldopnemer, kredietopnemer of huurder gegee word alvorens finansieringskoste ingevolge die verhoogde finansieringskostekoers verhaal mag word.”.

Invoeging van artikel 5A in Wet 73 van 1968

5. Die volgende artikel word hierby in die Hoofwet na artikel 5 ingevoeg:

“Verhaal van sekere gelde wat nie deur artikel 5 veroorloof word nie

- 5A. (1)** Benewens die bedrae waarvoor 'n gelduitlener, kredietgewer of verhuurder kragtens artikel 5 geregtig is om vonnis te verkry of wat hy geregtig is om daarkragtens te verhaal, kan hy, kragtens 'n verband oor vaste eiendom of oor 'n reg op sodanige eiendom, of kragtens 'n latere skriftelike ooreenkoms kragtens die verband, vonnis verkry vir die volgende bedrae of dit verhaal, naamlik—
- (a) enige bedrag deur die gelduitlener, kredietgewer of verhuurder namens die geldopnemer, kredietopnemer of huurder uitbetaal ten opsigte van—
- (i) die aanlê van riolering op die eiendom of die eiendom waarop die reg bestaan;
 - (ii) die voorsiening van elektrisiteit of water op die eiendom of die eiendom waarop die reg bestaan;
 - (iii) die koste aangegaan om die eiendom van huurbesit in eiendomsbesit te omskep;
 - (iv) die koste van die verdeling van die eiendom ooreenkombig 'n deelplan ingevolge die Wet op Deeltitels, 1986 (Wet No. 95 van 1986); en
 - (v) belastings en lisensiegelde ten opsigte van die eiendom of reg;

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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;
 - (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);
 - (iii) the amount in rand and cents of the finance charges calculated at the annual finance charge rate stated in [paragraph (h)] subparagraph (iv);
 - (iv) the annual finance charge rate;
 - (v) the date with effect from which finance charges are to be paid by the lessee; and
 - (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

- 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) finansieringskoste op enige bedrag in paragraaf (a) bedoel teen 'n finansieringskostekoers per jaar wat nie hoer is nie as die koers waarteen finansieringskoste betaalbaar is op die hoofskuld wat deur die verband verseker is; en
- (c) regskoste deur die gelduitlener, kredietgewer of verhuurder aangaan ten opsigte van geregtelike proses ingestel teen 'n geldopnemer, kredietopnemer of huurder, en ook teen 'n verbandgewer indien die geldopnemer, kredietopnemer of huurder nie die verbandgewer is nie, vir die verhaal van enige bedrag of koste bedoel in paragraaf (a) of (b).
- (2) Die bepalings van artikels 5 (2) en (3) en 6L is *mutatis mutandis* van toepassing op 'n bedrag wat ingevolge subartikel (1) verhaalbaar is.
- (3) Die bepalings van subartikels (1) en (2) is ook van toepassing op 'n geldleningstransaksie, krediettransaksie of huurtransaksie wat voor die inwerkingtreding van die Woekerwysigingswet, 1988, gesluit is.".

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Vervanging van artikel 6L van Wet 73 van 1968, soos ingevoeg deur artikel 10 van Wet 90 van 1980**6. Artikel 6L van die Hoofwet word hierby deur die volgende artikel vervang:**

"Posisie betreffende verhaling van bykomende finansieringskoste en ander koste

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6L. Die bepalings van artikels 6B tot 6K word nie so uitgelê dat 'n gelduitlener of 'n kredietgewer of 'n verhuurder verbied word om 'n bedrag wat ingevolge artikel 5 (1) (b) of 5A (1) (a) uitbetaal is of die bykomende finansieringskoste en regskoste bedoel in artikel 5 (1) (d), (e) of (f) of 5A (1) (b) of (c), te verhaal nie.".

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Wysiging van artikel 10 van Wet 73 van 1968, soos vervang deur artikel 13 van Wet 90 van 1980**7. Artikel 10 van die Hoofwet word hierby gewysig—**

(a) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

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"(b) indien toepaslik, die som van enige bedrae in artikel 5 (1) (b) of 5A (1) bedoel wat werklik [deur die gelduitlener] uitbetaal is;" en

(b) deur die voorbehoudbepaling by subartikel (3) deur die volgende voorbehoudbepaling te vervang:

"Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie ten opsigte van 'n wissel, [verband] debetsaldo, geldlening of skuldbrief bedoel in artikel 3 (3), of enige transaksie bedoel in subartikel (5) (a).".

Invoeging van artikel 15A in Wet 73 van 1968**8. Die volgende artikel word hierby in die Hoofwet na artikel 15 ingevoeg:**

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"Vrystellings deur Minister

15A. Die Minister kan van tyd tot tyd kategorieë krediettransaksies of huurtransaksies op die voorwaardes en in die mate wat hy goedvind, by kennisgewing in die Staatskoerant vrystel van enige van of al die bepalings van hierdie Wet, en kan so 'n vrystelling te eniger tyd op soortgelyke wyse intrek of wysig.".

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Vervanging van artikel 17 van Wet 73 van 1968**9. Artikel 17 van die Hoofwet word hierby deur die volgende artikel vervang:**

"Strafbepalings

17. 'n Persoon wat 'n bepaling van hierdie Wet oortree of versuim om te voldoen aan 'n bepaling van hierdie Wet waaraan dit sy plig is om te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens [duisend] tienduisend rand of met gevange-

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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:
“if applicable, the sum of any amounts referred to in section 5 (1) (b) or 5A 30 (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 35 (a).”.

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**
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 50

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nisstraf vir 'n tydperk van hoogstens **[twee]** drie jaar of met sowel sodanige boete as sodanige gevangenisstraf.”.

Kort titel en inwerkingtreding

10. Hierdie Wet heet die Woekerwysigingswet, 1988, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal. 5

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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 operation on a date to be fixed by the State President by proclamation in the *Gazette*.

