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OFFICE OF THE PRESIDENT

No. 585.

14 May 1999

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

No. 23 of 1999: Harmful Business Practices Amendment Act, 1999.

KANTOOR VAN DIE PRESIDENT

No. 585.

14 Mei 1999

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

No. 23 van 1999: Wysigingswet op Skadelike Sakepraktyke, 1999.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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*(English text signed by the President.)
(Assented to 14 April 1999.)*

ACT

To amend the Harmful Business Practices Act, 1988, so as to harmonise the Act with provincial legislation; to amend and insert certain definitions; to reconstitute and rename the Business Practices Committee; to provide for an executive committee; to authorise an investigating officer to enter any premises with a search warrant; to provide for appeals against decisions of competent authorities in the provinces; to phase out the existing special courts and to replace them with a permanent special court; to provide for the staying of civil proceedings; to extend the application of the Act throughout the Republic; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 71 of 1988, as amended by section 1 of Act 33 of 1993

1. Section 1 of the Harmful Business Practices Act, 1988 (in this Act referred to as the principal Act), is hereby amended—
- (a) by the insertion before the definition of “benefit” of the following definition: “arrangement means, except in paragraph (a) of the definition of ‘business practice’, an arrangement or undertaking negotiated by the committee;”; 5
- (b) by the substitution for the definition of “business” of the following definition: “business means any business, undertaking or person who—
- (a) offers, supplies, or makes available any commodity;
- (b) solicits or receives any investment or to whom any investment is supplied or made available;”; 10
- (c) by the substitution for the definition of “business practice” of the following definition: “‘business practice’ includes—
- (a) any agreement, accord, arrangement, [or] understanding or undertaking, whether legally enforceable or not, between two or more persons; 15
- (b) any scheme, practice or method of trading, including any method of marketing or distribution;
- (c) any advertising, [or] type of advertising or any other manner of soliciting business”; 20
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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordnings aan.
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- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordnings aan.
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*(Engelse teks deur die President geteken.)
(Goedgekeur op 14 April 1999.)*

WET

Tot wysiging van die Wet op Skadelike Sakepraktyke, 1988, ten einde die Wet te harmonieer met provinsiale wetgewing; om bepaalde omskrywings te wysig en in te voeg; om die Sakepraktykekomitee opnuut saam te stel en te hernoem; om voorsiening te maak vir 'n uitvoerende komitee; om 'n ondersoekbeampte te magtig om 'n perseel te betree met 'n visenteringslasbrief; om voorsiening te maak vir appelle teen beslissings van bevoegde owerhede in die provinsies; om die bestaande spesiale howe uit te fasier en om hulle met 'n permanente spesiale hof te vervang; om voorsiening te maak vir die opskorting van siviele gedinge; om die toepassing van die Wet na die hele Republiek uit te brei; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika soos volg:

Wysiging van artikel 1 van Wet 71 van 1988, soos gewysig deur artikel 1 van Wet 33 van 1993

- 5 1. Artikel 1 van die Wet op Skadelike Sakepraktyke, 1988 (in hierdie Wet die Hoofwet genoem), word hierby gewysig—
- (a) deur na die omskrywing van "bate" die volgende omskrywing in te voeg:
"belegging" enige geld, eiendom of enige ander faciliteit bedoel vir benutting in verband met enige onderneming of skema vir die verkryging van wins of wat voorgee om aldus bedoel te wees;"
 - 10 (b) deur die omskrywing van "besigheid" deur die volgende omskrywing te vervang:
"besigheid" enige besigheid, onderneming of persoon wat—
- | | |
|----|--|
| 15 | (a) enige handelsartikel aanbied, verskaf of beskikbaar stel; |
| | (b) enige belegging werf of ontvang of aan wie enige belegging voorsien word of beskikbaar gestel word;" |
- (c) deur na die omskrywing van "besigheid" die volgende omskrywing in te voeg:
"bevoegde owerheid" 'n bevoegde owerheid verantwoordelik vir sakepraktyke of verbruikersbeskerming in die provinsiale regeringsfeer ingevolge provinsiale wetgewing;"
 - 20 (d) deur in die Engelse teks die omskrywing van "chairman" deur die volgende omskrywing te vervang:

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- (d) any act or omission on the part of any person, whether acting independently or in concert with any other person;
- (e) any situation arising out of the activities of any person or class or group of persons,
but does not include a practice regulated by competition law;”;
- (d) by the substitution for the definition of “chairman” of the following definition:
“[‘chairman’] ‘chairperson’ means the [chairman] chairperson referred to in section 2(2);”;
- (e) by the substitution for the definition of “committee” of the following definition:
“‘committee’ means the [Business Practices] Consumer Affairs Committee established by section 2;”;
- (f) by the substitution for the definition of “commodity” of the following definition:
“‘commodity’ means any property, whether corporeal or incorporeal and whether movable or immovable, and also any make or brand of any commodity and any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service, but does not include service in terms of a contract of employment;”;
- (g) by the insertion after the definition of “commodity” of the following definition:
“‘competent authority’ means a competent authority responsible for business practices or consumer protection in the provincial sphere of government in terms of provincial legislation;”;
- (h) by the substitution for the definition of “consumer” of the following definition:
“‘consumer’ means [a] —
(a) any natural person to whom any commodity is offered, supplied or made available;
(b) any natural person from whom any investment is solicited or who supplies or makes available any investment;
(c) any other person who the Minister with the concurrence of the committee declares to be a consumer by notice in the *Gazette*;
(d) any person who is a consumer for the purposes of this Act in terms of any other law;”;
- (i) by the deletion of the definition of “harmful business practice”;
- (j) by the insertion after the definition of “investigating officer” of the following definitions:
“‘investment’ means any money, property or any other facility intended for utilisation in connection with any venture or scheme for the acquisition of gain or purported to be so intended;
‘magistrate’ means the Magistrate: Pretoria or the magistrate of the district where the investigation is to be carried out;”;
- (k) by the substitution for the definition of “Minister” of the following definition:
“‘Minister’ means the Minister of [Economic Affairs and Technology] Trade and Industry;”;
- (l) by the insertion after the definition of “trade coupon” of the following definition:
“‘unfair business practice’ means any business practice which, directly or indirectly, has or is likely to have the effect of—
(a) harming the relations between businesses and consumers;
(b) unreasonably prejudicing any consumer;
(c) deceiving any consumer; or
(d) unfairly affecting any consumer.”.

- “[‘chairman’] ‘chairperson’ means the [chairman] chairperson referred to in section 2(2);”;
- (e) deur die omskrywing van “handelsartikel” deur die volgende omskrywing te vervang:
- “ ‘handelsartikel’ enige saak, hetsy liggaamlik of onliggaamlik en hetsy roerend of onroerend, en ook enige fabrikaat of merk van enige handelsartikel en enige diens, hetsy persoonlik, professioneel of andersins, met inbegrip van enige opbergings-, vervoer-, versekerings- of bankdienis, maar uitgesonderd diens ingevolge ‘n dienskontrak;”;
- (f) deur die omskrywing van “komitee” deur die volgende omskrywing te vervang:
- “ ‘komitee’ die [Sakepraktykekomitee] Verbruikersakekomitee by artikel 2 ingestel;”;
- (g) deur na die omskrywing van “komitee” die volgende omskrywing in te voeg:
“ ‘landdros’ die Landdros: Pretoria of die landdros van die distrik waar die ondersoek uitgevoer gaan word;”;
- (h) deur die omskrywing van “Minister” deur die volgende omskrywing te vervang:
“ Minister’ die Minister van [Ekonomiese Sake en Tegnologie] Handel en Nywerheid;”;
- (i) deur na die omskrywing van “ondersoekbeampte” die volgende omskrywings in te voeg:
“ ‘onbillike sakepraktyk’ enige sakepraktyk wat regstreeks of onregstreeks die uitwerking het of waarskynlik sal hê om—
(a) die verhoudinge tussen besighede en verbruikers te skaad;
(b) enige verbruiker onredelik te benadeel;
(c) enige verbruiker te mislei; of
(d) enige verbruiker onbillik te raak;
‘reëling’ ‘n reëling of onderneming wat deur die komitee onderhandel is, behalwe waar dit voorkom in paragraaf (a) van die omskrywing van ‘sakepraktyk’;”;
- (j) deur die omskrywing van “sakepraktyk” deur die volgende omskrywing te vervang:
“ ‘sakepraktyk’ ook—
(a) enige ooreenkoms, verdrag, reëling, [of] verstandhouding of onderneming, hetsy regtens afdwingbaar of nie, tussen twee of meer persone;
(b) enige skema, praktyk of handelsmetode, met inbegrip van enige metode van bemarking of distribusie;
(c) enige reklame, [of] tipe reklame of enige ander wyse om besigheid te werf;
(d) enige handeling of versuim deur enige iemand, hetsy hy of sy onafhanklik of tesame met enige iemand anders optree;
(e) enige toestand wat uit die bedrywighede van enige persoon of klas of groep persone ontstaan,
maar nie ook ‘n praktyk wat gereguleer word deur mededingingsreg nie;”;
- (k) deur die omskrywing van “skadelike sakepraktyk” te skrap; en
- (l) deur die omskrywing van “verbruiker” deur die volgende omskrywing te vervang:
“ ‘verbruiker’ [‘n]—
(a) enige natuurlike persoon aan wie enige handelsartikel aangebied, verskaf of beskikbaar gestel word;
(b) enige natuurlike persoon van wie enige belegging gewerf word of wat enige belegging verskaf of beskikbaar stel;
(c) enige ander persoon wat die Minister met die instemming van die komitee by kennisgewing in die Staatskoerant verklaar ‘n verbruiker te wees;
(d) enige persoon wat ingevolge enige ander wet ‘n verbruiker vir die doel van hierdie Wet is;”.

Amendment of section 2 of Act 71 of 1988, as amended by section 1 of Act 64 of 1991 and section 2 of Act 33 of 1993**2. Section 2 of the principal Act is hereby amended—**

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

“(1) There is hereby established a committee to be known as the [Business Practices] Consumer Affairs Committee.”;

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

“(a) The committee shall consist of nine members appointed by the Minister on the grounds of having special knowledge or experience of consumer advocacy, economics, industry, commerce or law, taking into account the need to ensure equitable representation. The Minister shall designate one as chairperson and one as vice-chairperson.

(aA) The chairperson shall be a person with suitable experience in consumer law.

(aB) In order to assist and to ensure effective co-operation between the committee and a competent authority, the head of consumer affairs in every provincial sphere of government shall be invited to, and may, participate in all meetings of the committee but shall not have the right to vote at such meetings.”;

(c) by the substitution for paragraph (a) of subsection (7) of the following paragraph:

“(a) The chairperson—

(i) shall determine the times when and places at which the meetings of the committee shall be held; and

(ii) may determine that a meeting other than a meeting convened for purposes of investigations under section 5, takes place through any method of telecommunication.”; and

(d) by the insertion after paragraph (d) of subsection (7) of the following paragraph:

“(e) The quorum for the meetings of the committee shall be—

(i) the chairperson or vice-chairperson; and

(ii) four other members of the committee.”.

Substitution of section 3 of Act 71 of 1988

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3. The following section is hereby substituted for section 3 of the principal Act:**“Executive committee**

3. (1) The committee shall, with the consent of the Minister, appoint an executive committee, consisting of at least—

(a) the chairperson or vice-chairperson; and

(b) two other members of the committee.

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(2) The committee, with the consent of the Minister—

(a) shall determine the quorum for and the procedure at meetings of the executive committee;

(b) may delegate any power conferred or duty imposed on the committee by this Act to the executive committee, either in general or in a particular case or in cases of a particular nature.

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(3) The executive committee must exercise any power or duty that has been delegated to it in terms of subsection (2)(b) subject to the conditions the committee considers necessary.

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(4) Any delegation in terms of subsection (2)(b)—

(a) must be in writing;

(b) does not prevent the committee from exercising the power or performing the duty itself;

(c) may at any time be withdrawn in writing by the committee.”.

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Amendment of section 4 of Act 71 of 1988, as amended by section 2 of Act 64 of 1991 and section 4 of Act 33 of 1993**4. Section 4 of the principal Act is hereby amended—**

(a) by the insertion after paragraph (b) of subsection (1) of the following paragraph:

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Wysiging van artikel 2 van Wet 71 van 1988, soos gewysig deur artikel 1 van Wet 64 van 1991 en artikel 2 van Wet 33 van 1993

2. Artikel 2 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

5 “(1) Daar word hierby 'n komitee ingestel wat bekend staan as die [Sakepraktykekomitee] Verbruikersakekomitee.”;

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

10 “(a) Die komitee bestaan uit nege lede deur die Minister aange-
stel op grond van hulle besondere kennis of ondervinding van ver-
bruikervoorspraak, die ekonomiese, die nywerheid, die handel of die reg
met inagneming van die nodigheid dat daar gelyke verteenwoordiging
is. Die Minister wys een as voorsitter en een as ondervoorsitter aan.

15 (aA) Die voorsitter moet 'n persoon wees met toepaslike onder-
vinding in verbruikersreg.

16 (aB) In 'n ondersteunende hoedanigheid en om doeltreffende
samewerking te verseker tussen die komitee en 'n bevoegde owerheid
moet die hoof van verbruikersake in elke provinsiale regeringsfeer
uitgenooi word om deel te neem aan die komiteevergaderings maar hy
of sy het nie die reg om by sodanige vergaderings te stem nie.”;

20 (c) deur paragraaf (a) van subartikel (7) deur die volgende paragraaf te vervang:

“(a) Die voorsitter—

(i) bepaal die tye wanneer en plekke waar die vergaderings van
die komitee gehou word; en

25 (ii) kan bepaal dat 'n ander vergadering as 'n vergadering belê vir
doeleindes van ondersoek kragtens artikel 5, deur enige
metode van telekommunikasie kan plaasvind.”; en

(d) deur na paragraaf (d) van subartikel (7) die volgende paragraaf in te voeg:

“(e) Die kworum vir die vergaderings van die komitee is—

(i) die voorsitter of ondervoorsitter; en

30 (ii) vier ander lede van die komitee.”.

Vervanging van artikel 3 van Wet 71 van 1988

3. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:

“Uitvoerende komitee

35 3. (1) Die komitee moet, met die toestemming van die Minister, 'n
uitvoerende komitee aanstel wat bestaan uit minstens—

(a) die voorsitter of ondervoorsitter; en

(b) twee ander lede van die komitee.

40 (2) Die komitee met die toestemming van die Minister—

(a) moet die kworum vir en die prosedure by vergaderings van die
uitvoerende komitee bepaal;

45 (b) kan enige bevoegdheid verleen of plig opgelê aan die komitee by
hierdie Wet aan die uitvoerende komitee deleger, óf in die algemeen
óf in 'n besondere geval of in gevalle van 'n besondere aard.

46 (3) Die uitvoerende komitee moet enige bevoegdheid of plig wat aan
hom ingevolge subartikel (2)(b) gedeleger is, uitvoer onderhewig aan die
vooraardes wat die komitee nodig ag.

50 (4) Enige delegasie ingevolge subartikel (2)(b)—

(a) moet skriftelik wees;

(b) verhoed die komitee nie om enige bevoegdheid of plig self uit te voer
nie;

51 (c) mag te eniger tyd skriftelik deur die komitee teruggetrek word.”.

Wysiging van artikel 4 van Wet 71 van 1988, soos gewysig deur artikel 2 van Wet 64 van 1991 en artikel 4 van Wet 33 van 1993

4. Artikel 4 van die Hoofwet word hierby gewysig—

55 (a) deur na paragraaf (b) van subartikel (1) die volgende paragraaf in te voeg:

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- “(bA) shall receive and dispose of particulars of the result of any investigation made by a competent authority in relation to any matter with which the committee may deal in terms of this Act;”;
- (b) by the deletion of “and” at the end of paragraph (c); and
- (c) by the insertion after paragraph (d) of subsection (1) of the following paragraph:
- “(e) may assign any preliminary investigation or investigation in terms of this Act, or part thereof, to a competent authority.”.

Amendment of section 5 of Act 71 of 1988, as amended by section 3 of Act 64 of 1991

5. Section 5 of the principal Act is hereby amended by the substitution in subsection (5) for the words “provincial division of the Supreme Court of South Africa” of the words “High Court”. 10

Amendment of section 7 of Act 71 of 1988, as amended by section 4 of Act 64 of 1991

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

- (a) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

“In order to ascertain whether this Act is being observed by any person to whom it applies, or to obtain any information required by the committee in relation to a preliminary investigation or an investigation by it in terms of this Act, an investigating officer may, subject to this section, at all reasonable times enter any premises on or in which any commodity, investment, book, statement, document or other object connected with that observation or information is or is reasonably suspected to be, and may—”; 20

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

“(b) examine that commodity or investment, and request from the owner or person in charge of those premises, information regarding that commodity or investment;”;

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

“(e) seize against the issue of a receipt that book, statement, document or object, if it appears to provide proof of a contravention of a provision of this Act, or if he or she wishes to retain it from further examination or for safe custody: Provided that a person from whose possession or charge that book, statement or document has been taken under this [paragraph] section shall, as long as it is in the possession or charge of the investigating officer concerned, at such person’s request be allowed, at his or her own expense and under the supervision of that investigating officer, or any other person in the service of the committee, to make copies thereof or to take extracts therefrom at any reasonable time.”; 35

- (d) by the insertion after subsection (3) of the following subsections:

“(3A) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigating officer shall enter premises and exercise any power contemplated in subsection (3) only under a search warrant issued by the magistrate if it appears to him or her from information given on oath or affirmation that there are reasonable grounds to suspect that—

- (a) an unfair business practice exists or may come into existence; and
- (b) a book, document or other object which may afford evidence of such an unfair business practice is on or in those premises. 50

(3B) A search warrant referred to in subsection (3A) shall—

- (a) authorise an investigating officer mentioned in the warrant to enter the premises identified in the warrant for the purpose of exercising any power contemplated in subsection (3);
- (b) be executed by day, unless the magistrate authorises the execution thereof at night; 55

- “(bA) moet die besonderhede van die uitslag van enige ondersoek gedoen deur 'n bevoegde owerheid met betrekking tot enige aangeleentheid waarmee die komitee ingevolge hierdie Wet kan handel, ontvang en dit afhandel;”;
- 5 (b) deur “en” aan die einde van paragraaf (c) te skrap; en
 (c) deur na paragraaf (d) van subartikel (1) die volgende paragraaf in te voeg:
 “(e) kan enige voorlopige ondersoek of ondersoek ingevolge hierdie Wet, of 'n gedeelte daarvan, toewys aan 'n bevoegde owerheid.”.

Wysiging van artikel 5 van Wet 71 van 1988, soos gewysig deur artikel 3 van Wet 10 64 van 1991

5. Artikel 5 van die Hoofwet word hierby gewysig deur in subartikel (5) die woorde “provinciale afdeling van die Hoogereghof van Suid-Afrika” deur die woorde “Hoë Hof” te vervang.

Wysiging van artikel 7 van Wet 71 van 1988, soos gewysig deur artikel 4 van Wet 15 64 van 1991

6. Artikel 7 van die Hoofwet word hierby gewysig—

- (a) deur die woorde wat paragraaf (a) van subartikel (3) voorafgaan, deur die volgende woorde te vervang:
 “Ten einde vas te stel of hierdie Wet nagekom word deur enigiemand op wie dit van toepassing is, of ter verkryging van enige inligting deur die komitee verlang met betrekking tot 'n voorlopige ondersoek of 'n ondersoek deur hom ingevolge hierdie Wet, kan 'n ondersoekbeampte, behoudens hierdie artikel, te alle redelike tye enige perseel betree waarop of waarin daar wel of redelikerwys vermoedelik enige handelsartikel, belegging, boek, staat, stuk of ander voorwerp is wat in verband staan met daardie nakoming of inligting, en hy of sy kan—”;
- 20 (b) deur paragraaf (b) van subartikel (3) deur die volgende paragraaf te vervang:
 “(b) daardie handelsartikel of belegging ondersoek, en van die eienaar of persoon in beheer van daardie perseel, inligting aangaande daardie handelsartikel of belegging aanvra;”;
- 25 (c) deur paragraaf (e) van subartikel (3) deur die volgende paragraaf te vervang:
 “(e) op daardie boek, staat, stuk of voorwerp beslag lê teen die uitreiking van 'n ontvangstbewys, indien dit bewys skyn te lewer van 'n oortreding van 'n bepaling van hierdie Wet, of indien hy of sy dit vir verdere ondersoek of vir veilige bewaring wil behou: Met dien verstande dat iemand uit wie se besit of beheer daardie boek, staat of stuk kragtens hierdie [paragraaf] artikel weggeneem is op sy of haar versoek toegelaat moet word om, solank dit in die besit of beheer van die betrokke ondersoekbeampte is, op so iemand se eie koste en onder die toesig van daardie ondersoekbeampte, of enige ander persoon in diens van die komitee, te [enige] eniger redelike tyd afskrifte daarvan of uittreksels daaruit te maak.”;
- 30 (d) deur die volgende subartikels na subartikel (3) in te voeg:
 “(3A) Tensy die eienaar of persoon in beheer van die betrokke perseel skriftelik daartoe ingestem het, moet 'n ondersoekbeampte die perseel betree en enige bevoegdheid bedoel in subartikel (3) slegs kragtens 'n visenteringslasbrief uitoefen, wat uitgerek word deur die landdros indien daar vir hom of haar op grond van inligting wat onder eed of bevestiging gegee is redelike gronde bestaan om te vermoed dat—
 (a) 'n onbillike sakepraktyk bestaan of tot stand kan kom; en
 (b) 'n boek, dokument of ander voorwerp wat bewys kan lewer van so 'n onbillike sakepraktyk op of in daardie perseel is.
 (3B) 'n Visenteringslasbrief bedoel in subartikel (3A)—
 (a) moet 'n ondersoekbeampte vermeld in die visenteringslasbrief magtig om die perseel geïdentifiseer in die visenteringslasbrief te betree met die doel om enige bevoegdheid beoog in subartikel (3) uit te oefen;
 (b) moet in die dag uitgevoer word, tensy die landdros die uitvoering daarvan in die nag magtig;

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- (c) be of force until—
 (i) it is executed;
 (ii) it is cancelled by the magistrate; or
 (iii) a period of one month from the date of issue has expired,
 whichever occurs first.”; and
- (e) by the substitution for subsection (4) of the following subsection:
 “(4) An investigating officer executing a search warrant shall, before such execution, upon demand by any person whose rights may be affected—
 (a) show that person his or her certificate of appointment; and
 (b) hand to that person a copy of the warrant.”.

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Amendment of section 8 of Act 71 of 1988, as amended by section 1 of Act 43 of 1990 and section 6 of Act 33 of 1993

- 7. Section 8 of the principal Act is hereby amended—**
 (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) into any business practice or type of business practice, in general or in relation to a particular commodity or investment or any class or kind of commodity or investment or a particular business or any class or type of business or a particular area, which in the opinion of the committee or the Minister, as the case may be, is commonly applied for the purposes of or in connection with the creation or maintenance of [harmful] unfair business practices;”; and
- (b) by the addition to subsection (1) of the following paragraph:
 “(d) into any unfair business practice referred to the committee in terms of any other law.”.

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

- 8. Section 12 of the principal Act is hereby amended in paragraph (c) of subsection (2)—**
 (a) by the substitution for the words “division of the Supreme Court of South Africa” of the words “High Court”; and
 (b) by the substitution for the words “State Expenditure” of the word “Finance”.

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Amendment of section 13 of Act 71 of 1988, as amended by section 9 of Act 33 of 1993

- 9. Section 13 of the principal Act is hereby amended—**
 (a) by the substitution for the heading of the following heading:
 “Appeals”;
 (b) by the substitution for subsections (1) to (3) of the following subsections:
 “(1) There shall be a right of appeal by any person affected by—
 (a) a notice under section 8(5), or 12(1)(b), (c) or (d); or
 (b) any notice, direction or measure of a competent authority in terms of such provisions of provincial legislation as have been designated for the purposes of this paragraph by the Minister by notice in the Gazette,
 to a special court.
 (2)(a) In this subsection ‘fixed date’ means the date on which the Harmful Business Practices Amendment Act, 1998, comes into operation.
 (b) The President may by proclamation in the Gazette establish a permanent special court with a permanent registrar, operating on an *ad hoc* basis, with jurisdiction in the area of jurisdiction of a High Court.
 (c) The President may by proclamation in the Gazette determine the date of dissolution of a special court established before the fixed date;

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- 5 (c) bly van krag totdat—
 (i) dit uitgevoer is;
 (ii) dit deur die landdros ingetrek word; of
 (iii) 'n tydperk van een maand vanaf die datum van uitreiking
 verstryk het,
 watter ook al eerste plaasvind.”; en
- 10 (e) deur subartikel (4) deur die volgende subartikel te vervang:
 “(4) 'n Onderzoekbeampte wat 'n visenteringslasbrief uitvoer, moet
 voor sodanige uitvoering, op aanvraag van enige persoon wie se regte
 geraak kan word—
 (a) sy of haar aanstellingsertifikaat aan daardie persoon toon; en
 (b) 'n afskrif van die lasbrief aan daardie persoon oorhandig.”.

Wysiging van artikel 8 van Wet 71 van 1988, soos gewysig deur artikel 1 van Wet 43 van 1990 en artikel 6 van Wet 33 van 1993

- 15 7. Artikel 8 van die Hoofwet word hierby gewysig—
 (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
 “(b) na enige sakepraktyk of tipe sakepraktyk, in die algemeen of met
 betrekking tot 'n besondere handelsartikel of belegging of enige
 klas of soort handelsartikel of belegging of 'n besondere of enige
 klas of 'n tipe besigheid of 'n besondere gebied, wat volgens die
 oordeel van die komitee of die Minister, na gelang van die geval,
 gewoonlik vir die doeleindes van of in verband met die skepping of
 handhawing van [skadelike] onbillike sakepraktyke aangewend
 word;”; en
- 20 25 (b) deur by subartikel (1) die volgende paragraaf te voeg:
 “(d) na enige onbillike sakepraktyk wat na hom verwys is ingevolge
 enige ander wet”.

Wysiging van artikel 12 van Wet 71 van 1988, soos gewysig deur artikel 3 van Wet 43 van 1990 en artikel 8 van Wet 33 van 1993

- 30 8. Artikel 12 van die Hoofwet word hierby gewysig in paragraaf (c) van subartikel (2)—
 (a) deur die woorde “afdeling van die Hooggereghof van Suid-Afrika” deur die
 woorde “Hoë Hof” te vervang; en
 (b) die woorde “Staatsbesteding” deur die woorde “Finansies” te vervang.

35 Wysiging van artikel 13 van Wet 71 van 1988, soos gewysig deur artikel 9 van Wet 33 van 1993

9. Artikel 13 van die Hoofwet word hierby gewysig—
 (a) deur die opskrif deur die volgende opskrif te vervang:
 “Appelle”;
 40 45 (b) deur subartikels (1) tot (3) deur die volgende subartikels te vervang:
 “(1) Daar is 'n reg van appèl na 'n spesiale hof deur enigiemand wat
 geraak word deur—
 (a) 'n kennisgewing kragtens artikel 8(5), of 12(1)(b), (c) of (d); of
 (b) enige kennisgewing, lasgewing of maatreël van 'n bevoegde
 overheid ingevolge die bepalings van provinsiale wetgewing wat deur
 die Minister by kennisgewing in die Staatskoerant vir die doeleindes
 van hierdie paragraaf aangewys is.
 (2)(a) In hierdie subartikel beteken 'vasgestelde datum' die datum
 waarop die Wysigingswet op Skadelike Sakepraktyke, 1998, in werking
 tree.
 (b) Die President kan by proklamasie in die Staatskoerant 'n vaste
 spesiale hof, met 'n vaste registrator wat op 'n *ad hoc*-grondslag werk,
 metregsbevoegdheid in die regsgebied van 'n Hoë Hof instel.
 (c) Die President kan by proklamasie in die Staatskoerant die
 ontbindingsdatum bepaal van 'n spesiale hof wat voor die vasgestelde
 datum ingestel is.

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<p>(d) Until a special court contemplated in paragraph (c) is dissolved, any reference to a ‘special court’ in this Act shall be construed as a reference to such a court.</p> <p>(e) Any application or matter referred to the special court referred to in paragraph (c) before the fixed date and which has not been disposed of on that date, shall be continued and disposed of by that special court.</p> <p>(3) A special court shall consist of—</p> <p>(a) a president, who shall be a judge of a High Court designated by the Chief Justice; and</p> <p>(b) two other members appointed by the President by proclamation in the <i>Gazette</i> from the nominees contemplated in subsection (3C).</p> <p>(3A) The Minister shall invite interested parties, by notice in the <i>Gazette</i> and an advertisement in the media regarded by the Minister as appropriate, to nominate candidates who have special knowledge or experience of consumer advocacy, economics, or industrial, commercial or financial matters, within 21 days after the publication of such notice, for consideration as members of the court.</p> <p>(3B) The names of the nominees shall thereafter be published in the <i>Gazette</i> and media contemplated in subsection (3A) for comment.</p> <p>(3C) The Minister may—</p> <p>(a) interview the nominees referred to in subsection (3B) and such interviews shall be open to the public; and</p> <p>(b) compile a final list of nominees for consideration by the President.</p> <p>(3D) No person shall be appointed or remain a member of the court if he or she—</p> <p>(a) is not a citizen of the Republic resident in the Republic;</p> <p>(b) is a public servant;</p> <p>(c) at the relevant time is, or during the preceding 12 months was, an office bearer, serving public representative or employee of any party, movement, organization or body of a party-political nature;</p> <p>(d) is an un-rehabilitated insolvent;</p> <p>(e) has before the commencement of this Act been convicted of an offence for which he or she has been sentenced to imprisonment without the option of a fine, unless the President, having due regard to the nature of the offence and the circumstances of the case, is satisfied on reasonable ground that such person is fit and proper to be so appointed;</p> <p>(f) has at any time been removed from an office of trust on account of misconduct or dishonourable conduct;</p> <p>(g) is of unsound mind; or</p> <p>(h) is a member of a competent authority.</p> <p>(3E) No person shall remain a member of the court if he or she fails to disclose an interest or an interest of his or her spouse, immediate family member, business partner or associate or employer which would require him or her to be recused.</p> <p>(3F) If at any stage during the hearing of an appeal, one of the members of the special court dies or becomes otherwise incapable of acting, the hearing shall be adjourned and commenced <i>de novo</i> before a newly constituted special court.”;</p> <p>(c) by the substitution in subsection (4) for the words “State President”, wherever they occur, of the word “President”;</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>
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- (d) Totdat 'n spesiale hof beoog in paragraaf (c) ontbind word, word enige verwysing na 'n 'spesiale hof' in hierdie Wet as 'n verwysing na so 'n hof uitgelê.
- 5 (e) Enige aansoek of aangeleenthed wat na die spesiale hof bedoel in paragraaf (c) verwys word voor die vasgestelde datum en nie afgehandel is op daardie datum nie, moet deur daardie spesiale hof voortgesit en afgehandel word.
- (3) 'n Spesiale hof bestaan uit—
- 10 (a) 'n president, wat 'n regter van 'n Hoë Hof is, aangewys deur die Hoofregter; en
- (b) twee ander lede wat deur die President by proklamasie in die *Staatskoerant* aangestel word uit die geledere van die benoemdes beoog in subartikel (3C).
- 15 (3A) Die Minister moet belanghebbende partye by kennisgewing in die *Staatskoerant* en deur middel van 'n advertensie in die media wat deur die Minister toepaslik geag word, nooi om, binne 21 dae na die publikasie van sodanige kennisgewing, kandidate wat besondere kennis of ondervinding van verbruikersvoorspraak, die ekonomiese, of nywerheids-, handels- of finansiële aangeleenthede het, vir oorweging as lede van die hof te benoem.
- 20 (3B) Die name van die benoemdes moet daarna vir kommentaar in die *Staatskoerant* en die media beoog in subartikel (3A) bekend gemaak word.
- (3C) Die Minister kan—
- 25 (a) onderhoude voer met die benoemdes bedoel in subartikel (3B) en sodanige onderhoude is oop vir die publiek; en
- (b) 'n finale lys van benoemdes vir oorweging deur die President saamstel.
- (3D) Niemand mag aangestel word of 'n lid van die hof bly nie indien hy of sy—
- 30 (a) nie 'n landsburger van die Republiek woonagtig in die Republiek is nie;
- (b) 'n staatsamptenaar is;
- (c) op die betrokke tyd, of gedurende die voorafgaande 12 maande, 'n ampsdraer, dienende openbare verteenwoordiger of werknemer van enige party, beweging, organisasie of liggaaam van 'n partypolitieke aard is of was;
- 35 (d) 'n ongerehabiliteerde insolvent is;
- (e) voor die inwerkingtreding van hierdie Wet skuldig bevind is aan 'n misdryf ten opsigte waarvan hy of sy gevonniss is tot gevangenisstraf sonder die keuse van 'n boete, tensy die President, met behoorlike inagneming van die aard van die misdryf en die omstandighede van die geval, op redelike gronde tevrede is dat sodanige persoon geskik en gepas is om as sodanig aangestel te word;
- 40 (f) te eniger tyd weens wangedrag of oneerbare gedrag uit 'n vertrouensamp ontslaan is;
- (g) geestesgebrekkig is; of
- (h) 'n lid van 'n bevoegde owerheid is.
- (3E) Niemand mag 'n lid van die hof bly nie indien hy of sy versum om 'n belang of 'n belang van sy of haar eggenoot, onmiddellike familielid, sakevennoot of medewerker of werkgewer bekend te maak wat sou vereis dat hy of sy onttrek word.
- 45 (3F) Indien op enige tydstip tydens die verhoor van 'n appèl een van die lede van die spesiale hof te sterwe kom of andersins onbevoeg raak om te handel, moet die verhoor verdaag en *de novo* voortgesit word voor 'n nuut saamgestelde spesiale hof";
- 50 (c) deur in subartikel (4) die woord "Staatspresident", oral waar dit voorkom, deur die woord "President" te vervang;

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(d) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

“(a) An appeal in terms of this section shall be lodged with the Minister in writing within six weeks after the date of publication of the notice, direction or measure to which the appeal relates or, if no notice is published, the date of the order of a court dealing with consumer matters and established by provincial legislation and shall set forth the grounds on which the appeal is based.”;

(e) by the substitution for subsections (10) and (11) of the following subsections, respectively:

“(10) A special court may after consideration of an appeal, confirm or set aside the notice, direction or measure to which the appeal relates or, if no notice is published, the date of the order of the court contemplated in subsection (5)(a), or amend it in such manner as it may deem equitable, and may make such orders as to costs as it may deem just.

“(11) The decision of [a] the majority of the members of [a] the special court shall be the decision of the court but the president alone shall decide any question of law, and whether any matter constitutes a question of law or a question of fact, and for that purpose he or she shall sit alone.”;

(f) by the substitution for the words “division of the Supreme Court of South Africa” in subsection (12) of the words “High Court”; and

(g) by the substitution for subsection (14) of the following subsection:

“(14) An order of a special court confirming, setting aside or amending the notice, direction or measure to which the order relates, shall be made known by the Minister by notice in the *Gazette*, and any amendment made to a notice, direction or measure by such an order shall have effect as if it were—

- (a) an amendment made under section 12(4)(d); or
- (b) a notice, direction or measure made under provincial legislation that has been designated for the purposes of subsection (1)(b) by the Minister by notice in the *Gazette*.”.

Amendment of section 14 of Act 71 of 1988

10. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person shall, except—

- (a) for the purposes of—
 - (i) the performance of his or her functions in terms of this Act; or
 - (ii) legal proceedings under this Act;
- (b) when required to do so by a court of law or under a law; or
- (c) with the permission of the chairperson,

disclose to any other person any information acquired by him or her in the performance of his or her functions in terms of this Act and relating to the business or affairs of any other person.”.

Amendment of section 19 of Act 71 of 1988

11. Section 19 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) If any person seeks to rely on an alleged unfair business practice in any civil proceedings, the court concerned may, on the application of any party to those proceedings, stay those proceedings in the interests of justice until such time as the Minister or the special court has made a decision in respect of the alleged unfair business practice in terms of this Act.”.

- (d) deur paragraaf (a) van subartikel (5) deur die volgende paragraaf te vervang:
 “(a) ’n Appèl ingevolge hierdie artikel moet skriftelik by die Minister ingedien word binne ses weke na die datum van publikasie van die kennisgewing, lasgewing of maatreël waarop die appèl betrekking het of, indien geen kennisgewing gepubliseer is nie, die datum van die bevel van ’n hof wat verbruikersake hanteer en deur provinsiale wetgewing ingestel is, en moet die gronde waarop die appèl berus, uiteensit.”;
- (e) deur subartikels (10) en (11) onderskeidelik deur die volgende subartikels te vervang:
- “(10) ’n Spesiale hof kan na oorweging van ’n appèl die kennisgewing, lasgewing of maatreël waarop die appèl betrekking het of, indien geen kennisgewing gepubliseer is nie, die datum van die bevel van die hof beoog in subartikel (5)(a), bekragtig of tersyde stel, of wysig op die wyse wat hy billik ag, en kan die bevele wat hy regverdig ag met betrekking tot koste verleen.
- (11) Die beslissing van [’n] die meerderheid van die lede van [’n] die spesiale hof is die beslissing van die hof maar slegs die president beslis ’n regsvraag, en of enige aangeleentheid ’n regsvraag of ’n feitevraag uitmaak, en vir dié doel sit hy of sy alleen.”;
- (f) deur in subartikel (12) die woorde “afdeling van die Hooggereghof van Suid-Afrika” deur die woorde “Hoë Hof” te vervang; en
- (g) deur subartikel (14) deur die volgende subartikel te vervang:
- “(14) ’n Bevel van ’n spesiale hof wat die kennisgewing, lasgewing of maatreël waarop die bevel betrekking het, bekragtig, tersyde stel of wysig moet deur die Minister by kennisgewing in die *Staatskoerant* bekend gemaak word en enige wysiging wat deur so ’n bevel aan ’n kennisgewing, lasgewing of maatreël aangebring word, geld asof dit—
- (a) ’n wysiging is wat kragtens artikel 12(4)(d) aangebring is; of
- (b) in kennisgewing, lasgewing of maatreël is wat aangebring is kragtens provinsiale wetgewing wat vir die doeleindeste van subartikel (1)(b) deur die Minister by kennisgewing in die Staatskoerant aangewys is.”.

Wysiging van artikel 14 van Wet 71 van 1988

10. Artikel 14 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- “(1) Niemand mag, behalwe—
- (a) vir die doeleindeste van—
- (i) die verrigting van sy of haar werksaamhede ingevolge hierdie Wet; of
- (ii) geregtelike verrigtinge kragtens hierdie Wet;
- (b) wanneer dit deur ’n gereghof of kragtens ’n wet van hom of haar vereis word; of
- (c) met die toestemming van die voorsitter,
 enige inligting wat deur hom of haar by die verrigting van sy of haar werksaamhede ingevolge hierdie Wet verkry is en wat op die besigheid of sake van iemand anders betrekking het, aan enigiemand anders openbaar nie.”.

Wysiging van artikel 19 van Wet 71 van 1988

11. Artikel 19 van die Hoofwet word hierby gewysig deur die byvoeging van die volgende subartikel, terwyl die bestaande artikel subartikel (1) word:

- “(2) Indien enigiemand op ’n beweerde onbillike sakepraktyk in enige siviele verrigtinge wil staatmaak, kan die betrokke hof op aansoek deur enige party by daardie verrigtinge, daardie verrigtinge in belang van geregtigheid opskort tot tyd en wyl die Minister of die spesiale hof ’n beslissing ten opsigte van die beweerde onbillike sakepraktyk ingevolge hierdie Wet bereik het.”.

Substitution of words “chairman”, in the English text, and “harmful business practice” in Act 71 of 1988

- 12.** (1) The English text of the principal Act is hereby amended by the substitution for the word “chairman”, wherever it occurs, of the word “chairperson”.
(2) The principal Act is hereby amended by the substitution for the words “harmful business practice”, wherever they occur, of the words “unfair business practice”. 5

Substitution of section 21 of Act 71 of 1988

- 13.** The following section is hereby substituted for section 21 of the principal Act:

“Short title

21. This Act shall be called the Consumer Affairs (Unfair Business Practices) Act, 1988.”. 10

Application of Act 71 of 1988 throughout Republic

- 14.** The principal Act applies throughout the Republic.

Short title

- 15.** This Act is called the Harmful Business Practices Amendment Act, 1999. 15

Vervanging van die woorde “chairman”, in die Engelse teks, en “skadelike sakepraktyk” in Wet 71 van 1988

- 12.(1) Die Engelse teks van die Hoofwet word hierby gewysig deur die woord “chairman”, waar dit ook al voorkom, deur die woord “chairperson” te vervang.
- 5 (2) Die Hoofwet word hierby gewysig deur die woorde “skadelike sakepraktyk”, waar dit ook al voorkom, deur die woorde “onbillike sakepraktyk” te vervang.

Vervanging van artikel 21 van Wet 71 van 1988

13. Artikel 21 van die Hoofwet word hierby deur die volgende artikel vervang:

“Kort titel”

- 10 **21.** Hierdie Wet heet die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988.”.

Toepassing van Wet 71 van 1988 oral in Republiek

14. Die Hoofwet is oral in die Republiek van toepassing.

Kort titel

- 15 **15.** Hierdie Wet heet die Wysigingswet op Skadelike Sakepraktyke, 1999.

