



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 812.

30 April 1986

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

No. 42 van 1986: Wysigingswet op Beperking en Bekendmaking van Finansieringskoste, 1986.

No. 812.

30 April 1986

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

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

LIMITATION AND DISCLOSURE OF FINANCE CHARGES
AMENDMENT ACT, 1986

Act No. 42, 1986

GENERAL EXPLANATORY NOTE:

[**]** Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

ACT

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

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

Wet No. 42, 1986

WYSIGINGSWET OP BEPERKING EN BEKENDMAKING VAN
FINANSIERINGSKOSTE, 1986

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
en artikel 1 van
Wet 90 van 1980.

1. Artikel 1 van die Wet op Beperking en Bekendmaking van Finansieringskoste, 1968 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur in die omskrywing van “kredietkaatskema”—
- (i) subparagraaf (ii) van paragraaf (a) deur die volgende subparagraaf te vervang:
- “(ii) ingevolge, en op die voorwaardes van, ’n ooreenkoms tussen hom en ’n leweransier onderneem om te betaal vir enige goedere of dienste wat van daardie leweransier gekoop of verkry is deur ’n kredietkaarthouer, of vir enige regte in ’n ooreenkoms vir die koop of verkryging van sodanige goedere of dienste, op sterkte van ’n geldige kredietkaart wat deur daardie bestuurder aan hom uitgereik is;” en
- (ii) deur subparagraaf (i) van paragraaf (c) deur die volgende subparagraaf te vervang:
- “(i) om aan daardie bestuurder enige bedrag te betaal wat daardie bestuurder aan ’n leweransier betaal het ten opsigte van goedere of dienste wat daardie leweransier aan daardie kredietkaarthouer verkoop of gelewer het, of ten opsigte van enige regte in ’n ooreenkoms vir die verkoop of verkryging van sodanige goedere of dienste, op sterkte van ’n geldige kredietkaart wat deur daardie bestuurder aan hom uitgereik is;”;
- (b) deur die omskrywing van “grootboekgelde” deur die volgende omskrywing te vervang:
- “grootboekgelde” gelde wat—
- (a) ’n bankinstelling soos omskryf in artikel 1 (1) van die Bankwet, 1965 (Wet No. 23 van 1965), hef vir die hou van ’n tjekrekening ten behoeve van ’n kliënt waaruit opvragings deur daardie kliënt deur middel van ’n tjek wat in aanmerking kom vir klaring deur die verrekingsbanke van Suid-Afrika gedoen kan word en wat aldus gehef word hetsy die rekening ’n debetsaldo of ’n kreditsaldo toon; of
- (b) ’n bankinstelling bedoel in paragraaf (a) (of sy volfiliaal) vir die aanvanklike uitreiking van ’n kredietkaart ingevolge ’n kredietkaatskema wat deur so ’n bankinstelling of volfiliaal as bestuurder van sodanige skema bedryf word;”;
- (c) deur paragraaf (c) van die omskrywing van “geldleningstransaksie” deur die volgende paragraaf te vervang:
- “(c) ’n transaksie waarkragtens onroerende goed verkoop word teen betaling deur die koper aan, of aan enigiemand ten behoeve van, die verkoper van ’n som geld op ’n bepaalde of bepaalbare toekomstige datum of in die geheel of gedeeltelik in paalemente oor ’n tydperk in die toekoms, in watter geval daardie som geld, uitgesonderd finansieringskoste, by die toepassing van hierdie Wet geag word ’n som geld te wees wat deur die verkoper aan die koper uitgeleen is, maar nie ook ’n transaksie nie waarkragtens onroerende goed verkoop word en ingevolge waarvan—
- (i) geen finansieringskoste deur die verkoper op die koopprys gehef word nie;
- (ii) die volle koopprys betaalbaar is teen registrasie van die onroerende goed op naam van die

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AMENDMENT ACT, 1986

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

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

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

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

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

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

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

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

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

"'ledger fee' means a fee charged by—

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

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

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

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

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

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

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- koper of 'n oordragener deur die koper be-
noem; en
- (iii) geen tussentydse paaient deur die koper
tussen die datum van die verkoop en sodanige
registrasie betaalbaar is nie, behalwe vir 'n 5
aanvanklike deposito betaalbaar in een bedrag
deur die koper aan 'n praktiserende prokureur
of 'n eiendomsagent wat in trust gehou sal
word in afwagting van sodanige registrasie, en
huurgeld of besettingsbelang wat 'n redelike 10
vergoeding vir die gebruik en genieting van
die betrokke onroerende goed deur die koper
uitmaak;" en
- (d) (i) deur subparagraaf (ddd) van paragraaf (a) (iii)
(aa) van die omskrywing van "hoofskuld" te 15
skrap;
- (ii) deur die woord "of" na subparagraaf (ee) te skrap
en die volgende subparagraawe by gemelde om-
skrywing te voeg:
- "(ff) koste wat werklik deur die gelduitlener betaal 20
is aan iemand wat vir eie rekening of as ven-
noot in 'n prokureursfirma of as lid van 'n pro-
fessionele maatskappy as prokureur prakti-
seer, ten opsigte van die opstelling van die
dokumente, met inbegrip van die betrokke 25
skuldakte en ander dokumente vir seker-
heidstelling ten opsigte van die lening, waarin
die betrokke geldleningstransaksie beliggaam
is;
- (gg) waar die geldlening nie in die geheel of ge- 30
deeltelik deur 'n verband oor onroerende
goed of 'n notariële verband oor roerende
goed gesekureer is nie, die belastings,
heffings, gelde en premies soos in subpara-
grawe (a) (iii) (aa) (bbb) en (ccc) bedoel met 35
betrekking tot die goed wat die onderwerp
van die geldlening is en wat werklik betaal
is of betaalbaar is deur die gelduitlener namens
die geldopnemer; of";
- (iii) deur subparagraaf (ff) van paragraaf (b) (iv) van 40
die omskrywing van "hoofskuld" deur die vol-
gende subparagraaf te vervang:
- "(ff) koste wat werklik deur die kredietgewer be-
taal is aan iemand wat vir eie rekening of as
vennoot in 'n prokureursfirma of as lid van 'n 45
professionele maatskappy as prokureur prakti-
seer, ten opsigte van die opstelling van die
dokumente, met inbegrip van die betrokke
skuldakte en ander dokumente vir seker-
heidstelling ten opsigte van die skuld, waarin 50
die betrokke krediettransaksie beliggaam is;
of" en
- (iv) deur subparagraaf (ff) van paragraaf (c) (iii) van
die omskrywing van "hoofskuld" deur die vol-
gende subparagraaf te vervang: 55
- "(ff) koste wat werklik deur die verhuurder betaal
is aan iemand wat vir eie rekening of as ven-
noot in 'n prokureursfirma of as lid van 'n pro-
fessionele maatskappy as prokureur prakti-
seer, ten opsigte van die opstelling van die 60
dokumente, met inbegrip van die betrokke
skuldakte en ander dokumente vir seker-
heidstelling ten opsigte van die skuld, waarin
die betrokke huurtransaksie beliggaam is;"

Wysiging van
artikel 2 van
Wet 73 van 1968,
soos gewysig deur
artikel 2 van
Wet 76 van 1970,

2. (1) Artikel 2 van die Hoofwet word hierby gewysig— 65
(a) deur subartikel (2) deur die volgende subartikel te ver-
vang:
"(2) 'n Kredietgewer beding, eis of ontvang nie
finansieringskoste in verband met 'n krediettransaksie

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

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

- (a) by the substitution for subsection (2) of the following subsection:

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

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

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artikel 2 van
Wet 62 van 1974
en artikel 2 van
Wet 90 van 1980.

teen 'n finansieringskostekoers per jaar van meer as 18,25% nie of, indien 'n ander persentasie, hetsy groter of kleiner, vir die doeleindes van hierdie subartikel by regulasie voorgeskryf word, as die persentasie nie wat aldus van tyd tot tyd voorgeskryf is: Met dien verstande dat verskillende persentasies vir krediettransaksies van verskillende geldwaardes van die hoofskuld aldus voorgeskryf kan word.”;

- (b) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) 'n Verhuurder beding, eis of ontvang nie finansieringskoste in verband met 'n huurtransaksie teen 'n finansieringskostekoers per jaar van meer as die persentasie wat van tyd tot tyd vir die doeleindes van hierdie subartikel by regulasie voorgeskryf is nie: Met dien verstande dat verskillende persentasies vir huurtransaksies van verskillende geldwaardes van die hoofskuld aldus voorgeskryf kan word.”;

- (c) deur paragraaf (a) van subartikel (4) deur die volgende paragraaf te vervang:

“(a) die [hytelkoers per jaar wat gelyk is aan die finansieringskostekoers per jaar waarteen] bedrag van finansieringskoste wat gehef mag word ten opsigte van 'n geldleningstransaksie of 'n krediettransaksie of 'n huurtransaksie in verband waarmee daar ooreengekom is dat betaling van die hoofskuld en finansieringskoste by wyse van reëlmatige betalings moet geskied, vasgestel kan word.”; en

- (d) deur subartikel (9) deur die volgende subartikel te vervang:

“(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 bepalinge van artikels 4 en 5, 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.”.

- (2) Die bepalinge van subartikel (1) (c) tree in werking op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

Wysiging van
artikel 2A van
Wet 73 van 1968,
soos ingevoeg
deur artikel 3
van Wet 90 van
1980.

3. Artikel 2A van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

“(a) vanaf die datum waarop daardie gelduitlener daardie lening toegestaan het tot op die datum onmiddellik voor die datum waarop daardie som geld aan of ten behoeve van daardie geldopnemer betaal is, teen 'n finansieringskostekoers per jaar van nie meer nie as die verskil tussen die finansieringskostekoers per jaar wat vermeld word in die skuldakte wat op daardie geldleningstransaksie betrekking het en die [rentekoers per jaar] koers vir skatkiswissels wat van toepassing is [ten opsigte van geld wat] op die datum waarop daardie lening toegestaan is [by wyse van daggelddeposito by die Nasionale Finansiële korporasie van Suid-Afrika belê word]: Met dien verstande dat waar van die gelduitlener vereis word dat hy waarborge ten behoeve van die geldopnemer moet verskaf en vir dié doel geld moet deponeer by die instelling wat die waarborg uitreik, hy die verskil kan verhaal tussen die finansieringskoste-

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

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

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

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

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

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

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

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

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

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

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

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

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koers per jaar wat in die skuldakte bepaal word en die koers wat hy op die instelling kan verhaal;”.

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
en artikel 4
van Wet 90 van
1980.

4. Artikel 3 van die Hoofwet word hierby gewysig—

- (a) deur die woorde wat paragraaf (a) van subartikel (1) voorafgaan deur die volgende woorde te vervang: 5
“(1) ’n Gelduitlener wat die uitleen van geld as ’n bedryf uitoefen of sy gemagtigde verteenwoordiger verstrekk, op versoek voordat ’n geldleningstransaksie in verband waarmee finansieringskoste betaalbaar is of betaalbaar sal wees, aangegaan word, afsonderlik, **[en]** 10 uitdruklik en skriftelik aan die voornemende geldopnemer, 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:”;
- (b) deur die woorde wat paragraaf (a) van subartikel (2) voorafgaan deur die volgende woorde te vervang: 15
“(2) ’n Kredietgewer wat in die normale loop van sy besigheid krediettransaksies aangaan of sy gemagtigde verteenwoordiger verstrekk, op versoek voordat ’n krediettransaksie in verband waarmee finansieringskoste betaalbaar is of betaalbaar sal wees, aangegaan word, afsonderlik, **[en]** uitdruklik en skriftelik aan die voornemende kredietopnemer, en, hetsy so ’n versoek gedoen word al dan nie, vermeld afsonderlik en uitdruklik 25 in elke skuldakte wat in verband met so ’n transaksie verly word, vir sover dit bekend en bepaalbaar is, die volgende besonderhede:”;
- (c) deur die woorde wat paragraaf (a) van subartikel (2A) voorafgaan deur die volgende woorde te vervang: 30
“(2A) ’n Verhuurder wat in die normale loop van sy besigheid huurtransaksies aangaan of sy gemagtigde verteenwoordiger verstrekk, op versoek voordat ’n huurtransaksie in verband waarmee finansieringskoste betaalbaar is of betaalbaar sal wees, 35 aangegaan word, afsonderlik, **[en]** 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 40 dit bekend en bepaalbaar is, die volgende besonderhede:”;
- (d) deur paragraaf (a) van subartikel (3) deur die volgende paragraaf te vervang: 45
“(a) ’n Wissel waar die wissel deur die Suid-Afrikaanse Reserwebank, die **[Nasionale Finansiële Korporasie van Suid-Afrika]** Korporasie vir Openbare Deposito’s of ’n bankinstelling soos omskryf in artikel 1 (1) van die Bankwet, 1965 (Wet No. 23 van 1965), 50 verly of verdiskonteer word;”.

Wysiging van
artikel 4 van
Wet 73 van 1968,
soos gewysig deur
artikel 6 van
Wet 90 van 1980.

5. Artikel 4 van die Hoofwet word hierby deur die volgende artikel vervang:

- “Beperking op bedrag verhaalbaar by versuim of by uitstel van betaling. 4. Indien ’n geldopnemer of kredietopnemer of huurder versuim om ’n bedrag wat hy in verband met ’n geldleningstransaksie of ’n krediettransaksie of ’n 55 huurtransaksie aan ’n gelduitlener of kredietgewer of verhuurder verskuldig is, te betaal op die tydstip waarop sodanige bedrag betaalbaar is, of indien ’n geldopnemer of kredietopnemer of huurder met ’n gelduitlener of kredietgewer of verhuurder ooreenkom om die betaling van ’n bedrag wat hy soos voormeld aan daardie gelduitlener of kredietgewer of verhuurder verskuldig is, uit te stel, is die gelduitlener of kredietgewer of verhuurder daarop geregtig 60 om op die geldopnemer of kredietopnemer of huurder ’n bykomende bedrag aan finansieringskoste te 65

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

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

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

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

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

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

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

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

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

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

Amendment of section 3 of Act 73 of 1968, as amended by section 3 of Act 76 of 1970, section 3 of Act 62 of 1974 and section 4 of Act 90 of 1980.

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

“Limitation of sum recoverable on default or deferment of payment.

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

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

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verhaal, wat bereken word met inagneming van die totale bedrag wat betaalbaar is maar onbetaald is, **[die finansieringskostekoers per jaar waarteen finansieringskoste aanvanklik op die hoofskuld gevorder is en, na gelang van die geval]** die tydperk wat die versuim voortduur of die tydperk waarvoor uitstel soos vermeld verleen word, na gelang van die geval, en die finansieringskostekoers per jaar waarteen finansieringskoste op die uitstaande saldo van die hoofskuld, ingevolge die skuldakte, gedurende sodanige tydperk bereken word.”.

Wysiging van artikel 5 van Wet 73 van 1968, soos vervang deur artikel 8 van Wet 90 van 1980.

6. Artikel 5 van die Hoofwet word hierby gewysig deur die volgende paragrawe by subartikel (1) te voeg:

- “(g) redelike grootboekgelde, indien toepaslik;
- “(h) redelike onderskrywingsgelde, indien aangegaan;
- “(i) behoudens die bepalings van artikels 6K (3) en 11A die koste vir herstel en instandhouding van roerende goed wat ingevolge ’n huurtransaksie verhuur is;
- “(j) ’n bedrag betaalbaar vir dienste gelewer soos beoog in artikel 2 (11) (b).”.

Wysiging van artikel 6K van Wet 73 van 1968, soos ingevoeg deur artikel 10 van Wet 90 van 1980.

7. Artikel 6K van die Hoofwet word hierby gewysig—

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

“(2) Waar ’n huurtransaksie ten opsigte waarvan finansieringskoste gehef word deur ’n verhuurder beëindig is weens versuim van die huurder om sy verpligtings ingevolge sodanige transaksie na te kom, moet die verhuurder die geldwaarde bepaal van die roerende goed, soos op die datum waarop daardie transaksie aldus beëindig word, wat ingevolge daardie transaksie verhuur is, en die huurder binne 14 dae nadat die verhuurder toegang tot die eiendom verkry om ’n waardasie te maak, skriftelik in kennis stel.”; en

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

“(3) Indien—

(a) by verstryking van die **[huurtermyn] huurtransaksie ten opsigte waarvan finansieringskoste gehef word** die geldwaarde, soos bepaal ingevolge subartikel (1), van die roerende goed wat ingevolge die betrokke huurtransaksie verhuur is, die boekwaarde daarvan oorskry of indien daardie goed aan ’n ander persoon as die huurder ingevolge daardie transaksie, verkoop of verhuur word teen ’n prys of geldwaarde, wat nie finansieringskoste insluit nie, wat groter is as daardie boekwaarde, moet die verhuurder ingevolge daardie transaksie, aan die huurder, na aftrekking van enige bedrag wat **[in verband met daardie transaksie]** deur die huurder aan die verhuurder verskuldig is, in kontant die bedrag betaal waarmee die geldwaarde aldus bepaal of die prys of geldwaarde, wat nie finansieringskoste insluit nie, waarteen daardie goed aan sodanige ander persoon verkoop of verhuur is, watter ook al die grootste is, daardie boekwaarde oorskry; of

(b) ’n huurtransaksie ten opsigte waarvan finansieringskoste gehef word beëindig word voor verstryking van die huurtermyn waarop by die aangaan van daardie transaksie ooreengekom is, en die roerende goed wat ingevolge daardie transaksie verhuur is, aan ’n ander persoon as die huurder ingevolge daardie transaksie, verkoop of verhuur word teen ’n prys of geldwaarde, wat nie finansieringskoste insluit nie, wat groter is as die geldwaarde daarvan, soos bepaal ingevolge subartikel (1) of (2), moet die verhuurder aan die huurder,

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

6. Section 5 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (e) of subsection (1), and by the addition to that subsection of the following paragraphs:

Amendment of section 5 of Act 73 of 1968, as substituted by section 8 of Act 90 of 1980.

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

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

Amendment of section 6K of Act 73 of 1968, as inserted by section 10 of Act 90 of 1980.

- “(a) by the substitution for subsection (2) of the following subsection:

“(2) Where a leasing transaction in respect of which finance charges are levied is terminated by a lessor on account of the failure of the lessee to meet his obligations in terms of such transaction, the lessor shall determine the money value, as at the date on which such transaction is so terminated, of the movable property leased in terms of such transaction, and notify the lessee in writing within 14 days after the lessor obtains access to the property to enable a valuation to be made.”; and

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

“(3) If—

- “(a) on expiry of the **[lease]** leasing transaction in respect of which finance charges are levied the money value, as determined in terms of subsection (1), of the movable property leased in terms of the leasing transaction concerned, exceeds the book value thereof or if such property is sold or leased to a person other than the lessee in terms of such transaction, at a price or money value, not including finance charges, exceeding such book value, the lessor in terms of such transaction, shall pay to the lessee, after deducting any amount owing by the lessee to the lessor **[in terms of such transaction]**, in cash the amount by which the money value so determined or the price or money value, not including finance charges, at which such property is sold or leased to such other person, whichever is the greater, exceeds such book value; or
- “(b) a leasing transaction in respect of which finance charges are levied is terminated before the expiry of the lease agreed upon at the conclusion of such transaction, and the movable property leased in terms of such transaction is sold or leased to a person other than the lessee in terms of such transaction, at a price or money value, not including finance charges, exceeding the money value thereof as determined in terms of subsection (1) or (2), the lessor shall pay to the lessee, after deducting

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na aftrekking van enige bedrag wat **[in verband met daardie transaksie]** deur die huurder aan die verhuurder verskuldig is, in kontant die bedrag betaal waarmee die prys of geldwaarde, wat nie finansieringskoste insluit nie, waarteen daardie goed aan sodanige ander persoon verkoop of verhuur is die geldwaarde oorskry wat aldus ingevolge subartikel (1) of (2) bepaal is: 5

Met dien verstande dat indien die verhuurder daardie goed na sodanige verstryking of beëindiging herstel of laat herstel het, hy geregtig is om vir die doeleindes van die berekening van die bedrag wat soos voormeld in kontant aan die huurder betaal moet word, die prys of geldwaarde waarteen daardie goed aan 'n ander persoon as die huurder verkoop of verhuur is, te verminder met die koste wat werklik deur die verhuurder ten opsigte van sodanige herstel aangegaan is." 15

Wysiging van artikel 13 van Wet 73 van 1968, soos gewysig deur artikel 17 van Wet 90 van 1980.

8. Artikel 13 van die Hoofwet word hierby gewysig deur die uitdrukkings "Wet op Inspeksie van Finansiële Instellings, 1962 (Wet No. 68 van 1962)," en "Wet op Inspeksie van Finansiële Instellings, 1962," waar hulle ook al voorkom, deur onderskeidelik die uitdrukkings "Wet op Inspeksie van Finansiële Instellings, 1984 (Wet No. 38 van 1984)," en "Wet op Inspeksie van Finansiële Instellings, 1984," te vervang. 20

Wysiging van artikel 21 van Wet 73 van 1968.

9. Artikel 21 van die Hoofwet word gewysig deur die uitdrukking "Wet op Beperking en Bekendmaking van Finansieringskoste" deur die uitdrukking "Woekerwet" te vervang. 25

Kort titel.

10. Hierdie Wet heet die Wysigingswet op Beperking en Bekendmaking van Finansieringskoste, 1986.

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

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

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

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

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

Amendment of section 21 of Act 73 of 1968.

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

Short title.

