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GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

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STATE PRESIDENT'S OFFICE

No. 1204. 14 June 1989

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

No. 91 of 1989: Usury Amendment Act, 1989.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1204. 14 Junie 1989

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

No. 91 van 1989: Woekerwysigingswet, 1989.

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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 effect a certain correction in the English text; to regulate anew the disclosure of an alteration of the finance charge rate where a variable finance charge rate has been agreed upon at the conclusion of a contract; to provide for the further recovery of certain moneys not permitted by section 5 of the Act; and to grant to the Minister the power to exempt certain money lending transactions from the application of the Act; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 1 June 1989.)

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

Amendment of section 2B of Act 73 of 1968, as inserted by section 3 of Act 100 of 1988

1. Section 2B of the Usury Act, 1968 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If a moneylender, credit grantor or lessor and a borrower, credit receiver or lessee **[has]** have 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.".

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, section 3 of Act 62 of 1987 and section 4 of Act 100 of 1988

2. Section 3 of the principal Act is hereby amended by the deletion of subsection (10) with effect from 28 February 1989.

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ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

________ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Woekerwet, 1968, ten einde 'n sekere verbetering in die Engelse teks aan te bring; die bekendmaking van 'n verandering van die finansieringskostekoers opnuut te reël waar by kontraksluiting op 'n wisselende finansieringskostekoers ooreengekom is; voorsiening te maak vir die verdere verhaal van sekere gelde wat nie deur artikel 5 van die Wet veroorloof word nie; en aan die Minister die bevoegdheid te verleen om sekere geldleningstransaksies van die toepassing van die Wet vry te stel; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 1 Junie 1989.)

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

Wysiging van artikel 2B van Wet 73 van 1968, soos ingevoeg deur artikel 3 van Wet 100 van 1988

1. Artikel 2B van die Woekerwet, 1968 (hieronder die Hoofwet genoem), word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Indien 'n gelduitlener, kredietgewer of verhuurder en 'n geldopnemer, kredietopnemer of huurder by die sluiting van 'n geldleningstransaksie, kredsettransaksie 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, artikel 3 van Wet 62 van 1987 en artikel 4 van Wet 100 van 1988

2. Artikel 3 van die Hoofwet word hierby gewysig deur subartikel (10) met ingang van 28 Februarie 1989 te skrap.

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Amendment of section 5 of Act 73 of 1968, as substituted by section 8 of Act 90 of 1980 and amended by section 6 of Act 42 of 1986 and section 4 of Act 62 of 1987

3. Section 5 of the principal Act is hereby amended by the substitution for paragraph *(b)* of subsection (1) of the following paragraph:

"*(b)* in the case of a money loan secured wholly or partly by a mortgage bond over immovable property and if the moneylender is authorized thereto in terms of an agreement between himself and the borrower—

(i) any amount actually disbursed by the moneylender after the conclusion of the transaction concerned in respect of the maintenance and repair of and renewal premiums on a fire insurance policy over the said immovable property;

(ii) any amount owing by the borrower to the moneylender at the tariff prescribed from time to time by the Minister for the valuation of the said immovable property where an inspection was actually carried out for the purposes of the granting of the loan concerned;".

Validation of certain amount recovered by moneylender

4. Any amount recovered by a moneylender from a borrower before the date of commencement of section 5 (1) *(b)* (ii) of the principal Act, as inserted by this Act, and which could have been so recovered by the moneylender under the said section 5 (1) *(b)* (ii) on the said date of commencement, shall be deemed to have been recovered under that section.

Amendment of section 10 of Act 73 of 1968, as substituted by section 13 of Act 90 of 1980 and amended by section 7 of Act 100 of 1988

5. Section 10 of the principal Act is hereby amended by the addition of the following subsection:

"(6) If agreement has been reached upon a variable finance charge rate in terms of section 2B (3) and no notice in writing of any alteration of such rate and the date upon which that alteration shall commence has in advance been delivered or sent through the post by a moneylender, credit grantor or lessor to a borrower, credit receiver or lessee, the moneylender, credit grantor or lessor shall at the first reasonable opportunity but not later than three months after the date upon which the alteration of the finance charge rate has commenced, deliver or send through the post to the borrower, credit receiver or lessee a written notice of such alteration and the date upon which that alteration has commenced.".

Amendment of section 15A of Act 73 of 1968, as inserted by section 8 of Act 100 of 1988

6. The following section is hereby substituted for section 15A of the principal Act:

"Exemptions by Minister

15A. The Minister may from time to time by notice in the *Gazette* exempt the categories of money lending transactions, credit transactions or leasing transactions which he may deem fit, 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.".

Short title and commencement

7. (1) This Act shall be called the Usury Amendment Act, 1989.

(2) Sections 3 and 4 shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

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Wysiging van artikel 5 van Wet 73 van 1968, soos vervang deur artikel 8 van Wet 90 van 1980 en gewysig deur artikel 6 van Wet 42 van 1986 en artikel 4 van Wet 62 van 1987

3. Artikel 5 van die Hoofwet word hierby gewysig deur paragraaf *(b)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(b)* in die geval van 'n geldlening wat in die geheel of gedeeltelik deur 'n verband op onroerende goed gesekureer is en indien die gelduitlener kragtens 'n ooreenkoms tussen hom en die geldopnemer daartoe gemagtig is—

(i) 'n bedrag wat, nadat die betrokke transaksie aangegaan is, werklik deur die gelduitlener uitbetaal is ten opsigte van die instandhouding en herstel van en hernuwingspremies op 'n brandversekeringspolis oor bedoelde onroerende goed;

(ii) 'n bedrag deur die geldopnemer aan die gelduitlener verskuldig, teen die tarief van tyd tot tyd deur die Minister voorgeskryf, vir die waardasie van bedoelde onroerende goed waar 'n inspeksie werklik gedoen is vir die doeleindes van die toestaan van die betrokke lening;".

Geldigverklaring van sekere bedrag deur gelduitlener verhaal

4. 'n Bedrag wat voor die datum van inwerkingtreding van artikel 5 (1) *(b)* (ii) van die Hoofwet, soos ingevoeg deur hierdie Wet, deur 'n gelduitlener op 'n geldopnemer verhaal is, en wat op genoemde datum van inwerkingtreding kragtens genoemde artikel 5 (1) *(b)* (ii) aldus deur die gelduitlener verhaal sou kon word, word geag kragtens daardie artikel verhaal te gewees het.

Wysiging van artikel 10 van Wet 73 van 1968, soos vervang deur artikel 13 van Wet 90 van 1980 en gewysig deur artikel 7 van Wet 100 van 1988

5. Artikel 10 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

"(6) Indien op 'n wisselende finansieringskostekoers ingevolge artikel 2B (3) ooreengekom is en geen skriftelike kennisgewing van 'n verandering van sodanige koers en die datum waarop daardie verandering 'n aanvang neem vooraf deur 'n gelduitlener, kredietgewer of verhuurder aan 'n geldopnemer, kredietopnemer of huurder oorhandig of deur die pos gestuur is nie, moet die gelduitlener, kredietgewer of verhuurder aan die geldopnemer, kredietopnemer of huurder by die eerste redelike geleentheid maar nie later nie as drie maande na die datum waarop die verandering van die finansieringskostekoers in werking getree het 'n skriftelike kennisgewing van sodanige verandering en die datum waarop daardie verandering in werking getree het, oorhandig of deur die pos stuur.".

Wysiging van artikel 15A van Wet 73 van 1968, soos ingevoeg deur artikel 8 van Wet 100 van 1988

6. Artikel 15A van die Hoofwet word hierby deur die volgende artikel vervang:

"Vrystellings deur Minister

15A. Die Minister kan van tyd tot tyd die kategorieë geldleningstransaksies, kredietransaksies of huurtransaksies wat hy goedvind, 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.".

Kort titel en inwerkingtreding

7. (1) Hierdie Wet heet die Woekerwysigingswet, 1989.

(2) Artikels 3 en 4 tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

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