

REPUBLIC OF SOUTH AFRICA

**SELECT COMMITTEE AMENDMENTS
TO**

**CONSUMER AFFAIRS (UNFAIR
BUSINESS PRACTICES)
AMENDMENT BILL**

[B 28—2001]

*(As agreed to by the Select Committee on Economic Affairs
(National Council of Provinces)) (The English text is the official text of the Bill)*

[B 28A—2001]

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 CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES)
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CLAUSE 1

1. On page 2, in line 8, to omit “the person summonsed” and to substitute:
[that] the person summonsed, or any person testifying on behalf of the person summonsed,

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 8A and 8B in Act 71 of 1988

3. The following sections are hereby inserted in the principal Act after section 8:

“Prohibition of business practice pending investigation by committee

8A. (1) Subject to subsection (2), the Minister may on the recommendation of the committee by notice in the *Gazette* at any time before the committee reports formally on the result of an investigation in terms of section 8(1)—

- (a) prescribe such action as may be necessary to stay or prevent a practice which is the subject of the investigation for a period of up to six months calculated from the date of the notice; and
 (b) order the attachment of any money or other property, whether movable or immovable, which relates to such investigation and which is held by any person on behalf of or for the benefit of the person mentioned in the notice, or of a customer, debtor or creditor of such person, until a curator contemplated in section 12(2) takes possession of such money or property or until the expiry of the period of six months, whichever occurs first.

(2) (a) Before the committee makes a recommendation to the Minister in terms of subsection (1), it shall inform the person who will be affected by its recommendation of its intention to make the recommendation and give the person an opportunity of a hearing by the committee.

(b) Before the Minister publishes a notice contemplated in subsection (1), the Minister shall take into account any argument at the hearing and must be satisfied that—

- (i) the practice in question amounts to or is likely to amount to an unfair business practice;

- (ii) there is no alternative remedy;
 - (iii) the prospect of harm to consumers if the notice is not published outweighs the potential prejudice to the affected person if the notice is published; and
 - (iv) the person mentioned in the notice has or will have the intention to defeat the interests of consumers by concealing or dissipating assets.
- (3) A copy of a notice contemplated in subsection (1) shall—
- (a) as soon as practicable be published in the *Gazette*; and
 - (b) be sent by registered post to any person mentioned in the notice together with a written statement—
 - (i) setting out the reasons for the decision to publish the notice; and
 - (ii) advising the recipient that he or she has the right in terms of section 13(1) to appeal to a special court or to take the decision on review to an appropriate court.
- (4) If the Minister orders the attachment of any immovable property in terms of subsection (1)(b), the Minister shall as soon as practicable thereafter notify the registrar of deeds of the attachment.
- (5) A notice contemplated in subsection (1) may be amended or withdrawn by the Minister at any time on the recommendation of the committee.
- (6) Any person who contravenes or fails to comply with a notice contemplated in subsection (1) shall be guilty of an offence.

Interdict by High Court

8B. Notwithstanding section 8A, the Minister may apply to a High Court for an interdict suspending a business practice, or such other remedial action, pending the outcome of any investigation by the committee.”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 13 of Act 71 of 1988, as amended by section 9 of Act 33 of 1993 and section 9 of Act 23 of 1999

6. Section 13 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a)a notice under section [8(5),] 8A or 12(1)(b), (c) or (d); or”.