Government Gazette 22701

THE PRESIDENCY

No. 920
26 September 2001

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

No. 21 of 2001: Consumer Affairs (Unfair Business Practices) Amendment Act, 2001.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 20 September 2001.)

ACT

To amend the Consumer Affairs (Unfair Business Practices) Act, 1988, so as to provide for the questioning of a person at a preliminary investigation by a person appointed by the chairperson of the committee; to make provision for interim measures pending the outcome of an investigation into an unfair business practice; to repeal certain obsolete provisions; and to empower a curator to obtain the assistance of an attorney or advocate under certain circumstances; and to provide for matters connected therewith.

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

Amendment of section 5 of Act 71 of 1988, as amended by section 3 of Act 64 of 1991 and section 5 of Act 23 of 1999

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

"(b) the committee, [or] an investigating officer *or a person appointed by the chairperson of the committee* may question [that] *the* person *summonsed, or any person testifying on behalf of the person summonsed*, under oath or affirmation administered by the chairperson, and the committee may examine or retain for further examination or for safe custody such a book, document or other object.".

Amendment of section 8 of Act 71 of 1988, as amended by section 1 of Act 43 of 1990, section 6 of Act 33 of 1993 and section 7 of Act 23 of 1999

2. Section 8 of the principal Act is hereby amended by the deletion of subsections (3), (5), (6) and (7).

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 ma 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.".

Amendment of section 10 of Act 71 of 1988, as amended by section 2 of Act 43 of 1990

4. Section 10 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (2).

Amendment of section 12 of Act 71 of 1988, as amended by section 3 of Act 43 of 1990, section 8 of Act 33 of 1993 and section 8 of Act 23 of 1999

5. Section 12 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (i) of the following paragraph:

"(i) A curator shall-

(i) act in the best interests of the clients, debtors and

creditors of the person placed under curatorship; *and*

(ii) *be entitled to the assistance of an attorney or advocate when interrogating any person summonsed, and such attorney or advocate may cross-examine such person.*".

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".

Short title

7. This Act shall be called the Consumer Affairs (Unfair Business Practices) Amendment Act, 2001.