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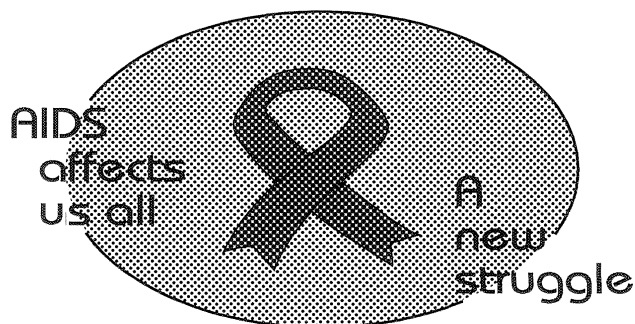
**BUITENGEWONE
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No. 7068

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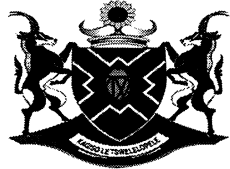
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GENERAL NOTICE

598 Unfair Business Practices Act (4/1996) and Harmful Business Practice Act (4/1996): For public comments 3 7068

GENERAL NOTICE

NOTICE 598 OF 2012



**North West
Provincial Government**

Department of Economic Development, Environment, Conservation and Tourism

Consumer Affairs (Unfair Business Practices (Act no.4 of 1996)

Proposed Amendments to the North West Consumer Affairs (Harmful Business Practice Act)

I, Motlalepula Rosho, Member of the Executive Council for the Department of Economic Development, Environment, Conservation and Tourism hereby gives notice of my intension to amend the North West Consumer Affairs (Harmful Business Practices Act No 4 of 1996).

Members of the Public are invited to submit to the MEC, within 30 days after the publication of the Notice in the Gazette, written representations or objections to the draft amendment bill should be submitted to the following address:

Post to The Acting Head of the Department of Economic Development, Environment, Conservation and Tourism

Attention Mr. Moeketsi Senqhi
Private Bag X 15
Mahikeng
2735

Hand Delivered : NWDC Building
Corner University Drive and Provident Street
2nd Floor
Mmabatho

Fax No : (018) 387 5660

Email Address: msenqhi@nwpg.gov.za

Any enquiries in connection with the draft amendment Bill can be directed to Mr. Senqhi at 018 387 7938.

Motlalepule Rosho

MEC for Department of Economic Development, Environment, Conservation and Tourism.

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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**CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES)
AMENDMENT BILL, 2012**

[DATE ASSENTMENT _____]

[DATE OF COMMENCEMENT _____]

(..... text signed by the Premier)

BILL

To amend the Consumer Affairs (Harmful Business Practices) Act, No 4 of 1996 and to provide for matters incidental thereto.

BE IT ENACTED by the Legislature of the North West Province, as follows:-

- 1. Amendment of section 1 of the Consumer Affairs (Unfair Business Practices) Act 4 of 1996 (Principal Act)**

Section 1 of the principal Act is hereby amended by the substitution for the definition of "Arrangement" of the following definition -

“Arrangement” means an arrangement or undertaking negotiated and concluded by the office under **[section 9]** section 8;

Section 1 of the principal Act is hereby amended by the substitution for the definition of “Court” of the following definitions -

“Court” means the Consumer Affairs Court, a quasi-judicial body established under section [11] 10;

Section 1 of the principal Act is hereby amended by the substitution for the definition of “Department” of the following definition -

“Department” means the Provincial Department of **[Finance and] Economic [Affairs] Development, Environment, Conservation and Tourism** or its successor in title;

Section 1 of the principal Act is hereby amended by the substitution for the definition of “Office” of the following definition -

“Office” means the Office for the Investigation of **[Harmful] Unfair Business Practices** contemplated in section 2

Section 1 of the principal Act is hereby amended by the substitution for the definition of “regulation” of the following definition –

“Regulation” means **[a]** regulation made under section **[24] 23**;

Section 1 of the principal Act is hereby amended by the substitution for the definition of “Responsible Member” of the following definition -

"Responsible Member" means the Member of the Executive Council of the Province responsible for the Department.

2. Section 1 of the principal Act is hereby amended by the deletion of the definition -

"[harmful business practice]";

3. Section 1 of the principal Act is hereby amended by the insertion of the following definition-

"Competent Court" means a Magistrate, Regional or High Court.

"Consumer Protector" means a person who is appointed in terms of Section 2A(1).

"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 a consumer; or

(c) deceiving a consumer.

4. **Substitution of the word "Head" with the words "Consumer Protector" in Act 4 of 1996**

The principal Act is hereby amended by the substitution of the word **"Head"** wherever it appears in this Act with the words "Consumer Protector"

5. Substitution of the word [harmful] with the word "unfair" in Act 4 of 1996.

The principal Act is hereby amended by the substitution of the word "**harmful**", wherever it appears in this Act with the word "unfair".

6. Amendment of section 2 of Act 4 of 1996

The principal Act is hereby amended by the substitution for section 2 of the following:

"Establishment of the Office for the Investigation of [Harmful] Unfair Business Practices

(1) There **[shall be]** is hereby established **[in accordance with provisions of the laws governing the Public Service,]** in the Department, an Office **[to be]** called **[the]** an Office for the Investigation of **[harmful]** unfair Business Practices.

(2) The functions of the Office shall be performed by the **[Official appointed as Investigating Officers by the responsible Member under the supervision of the Head of the Office]** Consumer Protector.

7. Deletion of sub-section 2 (4) of 1996

Section 2 (4) of the principal Act is hereby deleted.

8. Insertion of sections 2A and 2B in Act 4 of 1996

The following sections are hereby inserted after section 2(2) of the principal Act –

Section 2A. Appointment of the Consumer Protector

- (1) Subject to the laws governing the Public Service, the Responsible Member-
 - (a) shall appoint a person known as Consumer Protector;
 - (b) may from time to time appoint an Acting Consumer Protector, to discharge the duties of the Consumer Protector whenever the Consumer Protector is for any reason unable to perform those duties or while the appointment of a person as Consumer Protector is pending.
- (2) may appoint one or more persons to assist with the performance of the functions of the office, subject to the control and directions of the Consumer Protector.
- (3) A person contemplated in sub-section (1) may be paid such remuneration, allowances or expenses in accordance with the determined tariffs applicable in the public service.

Section 2B. Appointment of investigating officers and the staff of office

- (1) The Responsible Member or his or her delegate may, subject to the laws governing the Public Service, appoint persons in the service of the office or any other suitable persons, as investigating officers.

-
- (2) An investigating officer who is not in the full time service of the State may be appointed on such terms and conditions, and be paid such remuneration as may be prescribed.
- (3) When an investigating officer performs any function in terms of this Act, the investigating officer must-
- (a) be in possession of a certificate of appointment issued to that investigating officer in terms of sub-section (3); and
- (b) show that certificate to any person who-
- (i) is affected by the investigating officer's actions in terms of this Act; and
- (ii) requests to see the certificate.
- (4) The Responsible Member may appoint or contract any suitably qualified person to assist the Consumer Protector with carrying out of a particular investigation under this Act.
- (5) A person appointed or contracted in terms of sub-section (4) is not an investigating officer within the meaning of the Act.
- (6) A person contracted as contemplated under sub-section (4) may be paid such remuneration, allowance and expenses as determined by the Consumer Protector subject to approval by the Responsible Member.
- (7) The Consumer Protector and any other employee of the Office must not-
- (a) engage in any activity that may undermine the integrity of the office;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the office; or

(d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Office".

9. Amendment of section 3 of Act 4 of 1996

Section 3 of the principal Act is hereby amended by the deletion of paragraph (b).

10. Amendment of section 4 of the Act of 1996

Section 4 of the principal Act is hereby amended by the substitution of the following section:

4. **[Any Person]** A consumer aggrieved by an alleged [harmful] unfair business practice, or any other interested person, may [lay the matter in question before the Head] lodge a complaint with the Office [in the manner prescribed in terms of this Act].

11. Amendment of section 6 of Act 4 of 1996

Section 6 of the principal Act is hereby amended by the substitution for the numerals **["219(3)"]** in subsection (5) after the word "section" of the numerals 319(3)".

12. Amendment of section 7 of Act 4 of 1996

Section 7 of the principal Act is hereby amended by the substitution of subsection (2) of the following:

(1) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an Investigating Officer shall enter premises

and exercise powers contemplated in sub-section (1), only under a search warrant, which may only be issued by the **[Consumer Affairs Court] Magistrate Court** if it appears to **[that Court]** the Magistrate from information supplied, that there are reasonable grounds to suspect-

(a) that an **[harmful]** unfair business practice exists or may come into existence

13. Amendment of section 7 of Act 4 of 1996

Section 7 of the principal Act is hereby amended by the substitution of sub-section (7) (a) of the following:

(7) A person shall be guilty of an offence if he or she—

(a) obstructs or hinders an Investigating Officer in the performance of his or her functions in terms of **[this section]** this Act;

14. Deletion of section 7 (7) (b) of Act 4 of 1996

Section 7(7) (b) of the principal Act is hereby deleted.

15. Deletion of section 7 (8) of Act 4 of 1996

Section 7 (8) of the principal Act is hereby deleted.

16. Deletion of section 9(a) of Act 4 of 1996

Section 9(a) of the Principal Act is hereby deleted.

17. Insertion of section 9 (b) (iii) of Act 4 of 1996

The following sub-section is hereby inserted after section 9 (b) (ii) of the Principal Act –

- (iii) against any person alleged to be responsible for the prohibited conduct in terms of the Consumer Protection Act No. 68 of 2008 or any other applicable legislation.

18. Amendment of section 11 of Act 4 of 1996

Section 11 of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section -

- “(1) A court shall [**consists**] consist of three or five persons appointed by the Responsible Member, namely -”

19. Amendment of section 13 of Act 4 of 1996

Section 13 of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section –

13(1) A court shall—

- (a) hear, consider and make a decision on any matter which is before the court by virtue of proceedings instituted as contemplated in [**section 9 (b)**] this Act, the Consumer Protection Act No. 68 of 2008 or any other applicable legislation;
- (b) where applicable, exercise the powers and perform the functions and duties contemplated in [**sections 15 to 20**] this Act, the Consumer Protection Act No. 68 of 2008 or any other applicable legislation;

20. Insertion of sections 13A and 13B in Act 4 of 1996

The following sections are hereby inserted after section 13(2) of the principal Act –

Section 13A Orders of the court

In addition to its other powers in terms this Act, the Consumer Protection Act No. 68 of 2008 or any other applicable legislation, the court may make appropriate order in relation to a prohibited conduct or unfair business practice including -

- (1) declaring a business practice to be an unfair business practice.
- (2) declaring a conduct to be a prohibited conduct in terms of the Consumer Protection Act No. 68 of 2008 or any other applicable legislation.
- (3) imposing administrative fine on the scale to be prescribed or in the amount determined by the court, against any person found to have conducted an unfair business practice or engaged in a prohibited conduct.
- (4) confirming a consent agreement in terms of the Consumer Protection Act No. 68 of 2008 or any other applicable legislation as an order of the court.
- (5) interdicting any prohibited conduct in terms of the Consumer Protection Act No. 68 of 2008 or any other applicable legislation.
- (6) ordering any other appropriate relief to a consumer.

Section 13B Costs

- (1) Each party participating in a hearing before the court shall bear its own costs.

(2) If a court -

(a) has not made a finding against the respondent, it may awards costs to the respondent against a complainant who referred the complaint in terms of section 141 (1) of the National Credit Act No. 34 of 2005; or

(b) has made a finding against the respondent, it may awards costs against the respondent to the complainant who referred the complaint in terms of section 141 (1) of the National Credit Act No. 34 of 2005.

21. Amendment of section 14 of Act 4 of 1996

Section 14 of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section –

“(2) All proceedings of the court shall, subject to the provisions of sub-section (3) be **[opened]** open to the public”.

22. Insertion of section 14A in Act 4 of 1996

Section 14A Appeals and reviews

The following section is hereby inserted after section 14(7) of the principal Act –

Subject to the rules of the Magistrate Court and within 21 working days after a decision has been taken, a participant in a hearing before the court may -

(1) apply to the Magistrate Court to review the decision of the court in that matter; or

(2) appeal to the Magistrate Court against the decision of the court in that matter.

23. Amendment of section 15 of Act 4 of 1996

Section 15 of the principal Act is hereby amended by the substitution for sub-section (1)(c) of the following subsection -

“(c) question such person and examine any book, document or object which he or she has been required **[ro]** to”

24. Amendment of section 16 of Act 4 of 1996

Section 16 of the principal Act is hereby amended by the substitution for sub-section (1) of the following subsection –

“(1) A court may, if it is satisfied from **[information]** evidence placed before it by the Office that circumstances relating to a particular matter which is the subject of an investigation render that matter urgent in that irreparable prejudice would be caused if the matter were only to be dealt with by the court at proceedings in due course, issue a temporary order -”

25. Amendment of section 17 of Act 4 of 1996

Section 17 of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section -

“(2) the court may, after the person concerned has been given an opportunity to be heard, **[issues]** issue an order –

26. Insertion of section 17(3) and (4) in Act 4 of 1996

The following sub-sections are hereby inserted after section 17(2) of the principal Act –

- (3) The court may submit its order to the competent court, within 21 working days after the expiry of a period to apply for a review or appeal or within 21 working days after the decision of the review or appeal as the case may be, to be made an order of that court in terms of its rules.
- (4) the competent court may, without hearing evidence:
- (a) confirm the order;
 - (b) indicate changes that must be made in the draft order before it grant an order;
 - (c) refuse to make the order.

27. Amendment of section 18 of Act 4 of 1996

Section 18 of the principal Act is hereby amended by the substitution for sub-section (1)(b) of the following sub-section -

“(b) any person who is or was party to an agreement, understanding or omission, or who uses or has used any advertising or type of advertising or applies or has applied a scheme, practice or method of trading, including any method of marketing or distribution, or commits or has committed an act, or **[bring]** brings or has brought about a situation, or has or had any interest in a business or derives or derived any income from a business, or type of business, which is connected with the said **[harmful]**unfair business practice which may be specified in the order to -”

28. Amendment of section 18 of Act 4 of 1996

Section 18 of the principal Act is hereby amended by the insertion of a comma after the word "scheme" in sub-section (1) (b) (v) (cc).

29. Amendment of section 18 of Act 4 of 1996

Section 18 of the principal Act is hereby amended by the substitution for sub-section (1)(b)(v)(dd) of the following sub-section -

"(dd) committing any act or bringing about a situation, which is of a nature specified in the order and which the court is satisfied is likely to be applied for the purposes of, or in connection with, the creation or maintenance of any **[harmful]** unfair business practice."

30. Amendment of section 18 of Act 4 of 1996

Section 18 of the principal Act is hereby amended by the deletion of sub-section 18(1) (c).

31. Amendment of section 18 of Act 4 of 1996

Section 18 of the principal Act is hereby amended by the substitution for sub-section (2)(b) of the following sub-section -

"(b) may be made known in any other **[matter]** manner, including a notice in **[a newspaper or magazine or on the radio or television]** any form of print or electronic media".

32. Deletion of section 19 of Act 4 of 1996

Section 19 of the principal Act is hereby deleted.

33. Deletion of section 20 of Act 4 of 1996

Section 20 of the principal Act is hereby deleted.

34. Amendment of section 21 of Act 4 of 1996

Section 21 of the principal Act is hereby amended by the substitution for Sub-section (1) of the following sub-section -

“(1) The **[Head]** Consumer Protector shall, if there is reason to suspect that an **[harmful]** unfair business practice which is or was the subject of an investigation by the Office, exists or may come into existence elsewhere in the Republic other than in the Province, furnish the business practice committee established by section 2 of the Harmful Business Practice Act, 1988(Act No.71 of 1988), and any **[competence]** competent authority in the Province concerned with particulars of the business practice in question and any relevant information relating thereto which became known in the course of investigation by the officer or of proceedings before the court.

35. Amendment of section 21 of Act 4 of 1996

Section 21 of the principal Act is hereby amended by the substitution for Sub-section (2) of the following sub-section –

“(2) The **[Head]** Consumer Protector shall, if there is reason at any time during or after the completion of an investigation **[estimation]** to suspect that there has been or is being committed, or that an attempt has been or is being made to commit -”

36. Amendment of section 21 of Act 4 of 1996

Section 21 of the principal Act is hereby amended by the substitution for Sub-section (2)(a) of the following sub-section –

“(a) an offence, notify the **[Attorney General]** National Director of Public Prosecutions concerned accordingly;”

37. Amendment of section 22 of Act 4 of 1996

Section 22 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph -

“(a) in so far as may be necessary for the purpose of the due and proper exercise or performance of any power, function or **[duly]** duty in terms of this Act; or”

38. Short Title and Commencement.

This Act shall be called the Consumer Affairs (Unfair Business Practices) Amendment Act, 2012 and shall come into operation on a date determined by proclamation in the Provincial Gazette.

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