

“If a credit agreement is unlawful in terms of this section, despite [**any provision of common law,**] any other legislation or any provision of an agreement to the contrary, a court must make a just and equitable order including but not limited to an order that—”; and

(b) by the deletion in subsection (5) of paragraphs (b) and (c).

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Substitution of section 91 of Act 34 of 2005

28. The following section is hereby substituted for section 91 of the principal Act:

“Prohibition of unlawful provisions in credit agreements and supplementary agreements

91. (1) A credit provider must not directly or indirectly, by false pretences or with the intent to defraud, offer, require or induce a consumer to enter into or sign a credit agreement that contains an unlawful provision as contemplated in section 90. 10

(2) A credit provider must not directly or indirectly require or induce a consumer to enter into a supplementary agreement or sign any document, that contains a provision that would be unlawful if it were included in a credit agreement.”. 15

Amendment of section 100 of Act 34 of 2005

29. Section 100 of the principal Act is hereby amended by the addition of the following subsection: 20

“(3) A person who contravenes this section is guilty of an offence.”.

Amendment of section 106 of Act 34 of 2005

30. Section 106 of the principal Act is hereby amended by the addition of the following subsection: 25

“(8) The Minister may, in consultation with the Minister of Finance, prescribe the limit in respect of the cost of credit insurance that a credit provider may charge a consumer.”.

Insertion of section 126B in Act 34 of 2005

31. The following section is hereby inserted in the principal Act after section 126A:

“Application of prescription on debt

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126B. (1) (a) No person may sell a debt under a credit agreement to which this Act applies and that has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969).

(b) No person may continue the collection of, or re-activate a debt under a credit agreement to which this Act applies— 35

(i) which debt has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969); and

(ii) where the consumer raises the defence of prescription, or would reasonably have raised the defence of prescription had the consumer been aware of such a defence, in response to a demand, whether as part of legal proceedings or otherwise.”. 40

Amendment of section 129 of Act 34 of 2005

32. Section 129 of the principal Act is hereby amended—

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

“(3) Subject to subsection (4), a consumer may at any time before the 45