

CHAPTER 8:16

PREVENTION OF DISCRIMINATION ACT

Act 19/1998, 22/2001 (s. 4), 14/2002 (s. 12)

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AN ACT to prohibit discrimination on the ground of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender and to provide a remedy for persons injured by such discrimination; to prohibit the promotion of such discrimination; to amend section 3 of the Unlawful Organizations Act [Chapter 11:13], section 7 of the Banking Act [Chapter 24:01], section 14 of the Building Societies Act [Chapter 24:02], section 22 of the Insurance Act [Chapter 24:07], section 4 of the Education Act [Chapter 25:04] and the Estate Agents Act [Chapter 27:05]; to repeal the Public Premises (Prevention of Racial Discrimination) Act [Chapter 8:12] and the Immovable Property (Prevention of Discrimination) Act [Chapter 10:12]; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 29th January, 1999.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Prevention of Discrimination Act [Chapter 8:16].

2 Interpretation.

(1) In this Act—

“financial organization” means any person registered in terms of the Banking Act [Chapter 24:01], the Building Societies Act [Chapter 24:02] or the Insurance Act [Chapter 24:07];

“commodity” means any movable property, whether corporeal or incorporeal, of any kind whatsoever;

“immovable property” includes public premises;

“issue”, in relation to a licence, includes to grant the licence;

“licence” means any licence, permit or certificate issued in terms of any enactment and entitling the holder to use or occupy any public premises, to carry on any business or activity, or to sell, supply or provide any commodity, service or facility whatsoever;

“licensing authority” means the authority empowered in terms of the enactment concerned to issue a licence;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act.

[Definition inserted by section 12 of Act 14 of 2002]

“proprietor”, in relation to immovable property, includes—

- (a) a manager or any other person responsible for the management of the property; and
- (b) a lessee or sub-lessee who occupies the property;

“public premises” means—

- (a) any hotel, motel or similar premises where accommodation is provided for members of the public for payment; or
- (b) any restaurant, bar, beerhall, cafe or other premises where food and additionally, or alternatively, drink are served to members of the public for payment; or
- (c) any other person who occupies or controls the property;
- (d) any cinema, theatre, sports ground or other premises where any exhibition, performance, amusement, entertainment, contest, game or sport is held to which members of the public are admitted for payment; or
- (e) any premises licensed in terms of the Shop Licences Act [*Chapter 14:17*]; or
- (f) any premises owned or leased by the State for the purpose of discharging functions of the State; or
- (g) any other premises whatsoever at which any commodity is supplied or any services or facilities whatsoever are provided to members of the public for payment.

(2) A person shall be deemed for the purposes of this Act to discriminate against another person or class of persons if—

- (a) he refuses to admit that other person or class of persons to any premises or place; or
- (b) he refuses to supply or provide that other person or class of persons with any commodity, service or facility; or
- (c) he imposes restrictions or onerous terms or conditions in regard to—
 - (i) the admission of that other person or class of persons to any premises or place; or
 - (ii) the supply or provision of any commodity, service or facility to that other person or class of persons;

on the grounds of the race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender of that other person or class of persons.

(3) For the purposes of paragraph (c) of subsection (2), a term or condition shall be deemed to be onerous if it requires a person upon whom it is imposed—

- (a) to do anything; or
- (b) to possess some quality, attribute, asset or property;

which is not required to be done or possessed, as the case may be, by persons of a different race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender.

PART II

PREVENTION OF DISCRIMINATION

3 Prevention of discrimination in regard to public premises, commodities, services and facilities

(1) Subject to section *ten*, no person shall, on the grounds of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender of any person or class of persons—

- (a) refuse to admit that person or class of persons to any public premises or any part thereof; or
- (b) refuse to supply or provide any commodity, service or facility to that person or class of persons; or
- (c) discriminate against that person or class of persons in regard to—
 - (i) the admission of that person or class of persons to any public premises or part thereof; or
 - (ii) the supply or provision of any commodity, service or facility to that person or class of persons.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

4 Prevention of discrimination in regard to disposal of immovable property

(1) Subject to section *ten*, no person shall, on the grounds of the race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender of any person or class of persons—

- (a) refuse to sell, let or otherwise dispose of or to negotiate the sale, lease or other disposal of any immovable property to that person or class of persons; or

- (b) discriminate against that person or class of persons in respect of the sale, lease or other disposal of any immovable property; or
- (c) publish or cause to be published any notice, advertisement or statement in connection with the sale, lease or other disposal of any immovable property, which indicates, expressly or impliedly, a refusal or an unwillingness to sell, let or otherwise dispose of that property to that person or class of persons; or
- (d) induce anyone not to sell, let or otherwise dispose of any immovable property to that person or class of persons.

(2) No person shall, in order to avoid selling, letting or otherwise disposing of any immovable property to another person on the grounds of that other person's race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender, falsely represent to any other person that the immovable property has been sold, let or otherwise disposed of.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(4) If it is shown, in any criminal proceedings in respect of an offence under subsection (3) or in any proceedings in respect of an *injuria* referred to in section seven, that—

- (a) the accused person, defendant or respondent, as the case may be, represented to another person that any immovable property had been sold, let or otherwise disposed of, when in fact such immovable property had not been so sold, let or otherwise disposed of, as the case may be; and
- (b) when the accused person, defendant or respondent, as the case may be, made the representation referred to in paragraph (a), he knew or ought to have known that it was incorrect;

the accused person, defendant or respondent, as the case may be, shall be presumed, unless he shows the contrary, to have made the representation falsely in order to avoid selling, letting or otherwise disposing of the immovable property concerned to another person on the grounds of that other person's race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender.

5 Prevention of discrimination in regard to granting of finance

Without derogation from section three but subject to section ten, no financial organization and no employee or agent of a financial organization shall, on the grounds of the race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender of any person—

- (a) refuse to grant to such person a loan or other financial assistance; or
- (b) discriminate against that person in respect of a loan or other financial assistance granted or offered to such person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

6 Making or communication of racial statements

(1) No person shall make or knowingly communicate a statement based on racial superiority or hatred if there is a substantial risk that the statement may adversely affect the reputation, rights and freedoms of other persons in Zimbabwe.

(2) No person shall make any statement or do any thing which is reasonably likely to incite or encourage discrimination, in contravention of this Act, against any other person or class of persons on the ground or race, tribe, nationality, place of origin, national or ethnic origin, colour, creed or gender.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

7 Right of aggrieved person to damages

(1) Subject to section ten, any person who, on the grounds of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender, is—

- (a) refused admission to any public premises or any part thereof; or
- (b) refused the supply or provision of any commodity, service or facility; or
- (c) denied a right to purchase, hire or otherwise acquire any immovable property; or
- (d) refused a loan or other financial assistance; or
- (e) discriminated against in regard to—
 - (i) his admission to any public premises or part thereof; or
 - (ii) the supply or provision of any commodity, service or facility to him; or
 - (iii) the sale, lease or other disposal of any immovable property to him; or

(iv) the granting of a loan or other financial assistance to him;
shall be deemed to have suffered an *injuria* and shall have the right to recover damages therefor in any court of competent jurisdiction.

(2) Subject to section *ten*, any member of a class of persons in respect of whom a statement referred to in section *six* is made or communicated with the intent or realization referred to in that section shall be deemed to have suffered an *injuria*.

(3) This section shall not be construed as limiting any person's right under any other law to damages or any other legal remedy arising out of any conduct referred to in this section.

PART III

GENERAL

8 Further grounds for cancellation of licences

(1) Notwithstanding any other enactment but subject to this section, if a licensing authority is satisfied that—

- (a) the proprietor of any public premises in respect of which a licence has been issued; or
- (b) a person to whom a licence has been issued for the supply or provision of any commodity, service or facility or the carrying on of any activity;

has acted unlawfully in contravention of section *three, four* or *five*, the licensing authority may, subject to this section, by notice in writing to the licensee—

- (a) cancel the licence; or
- (b) suspend the licence for such period as the licensing authority may specify.

(2) Before cancelling or suspending a licence in terms of subsection (1), the licensing authority shall inform the licensee, in writing, of the grounds upon which it is proposed to do so and shall give the licensee a reasonable opportunity, being not less than thirty days, to make representations in person or in writing in relation to the proposed cancellation or suspension.

(3) Where the licensee elects to make representations referred to in subsection (2) in person, the licensing authority may appoint a person to hold an inquiry and such person, after hearing the licensee's representations and such other representations as he thinks fit, shall report to the licensing authority on the question of whether the licence should be cancelled or suspended.

(4) A licensing authority may appoint a magistrate nominated by the Chief Magistrate to hold an inquiry in terms of subsection (3).

(5) Any person who is aggrieved by a decision in terms of subsection (1) to cancel or suspend a licence may, within thirty days after being notified of the decision, appeal against it to the High Court, which may confirm the decision or give such other decision as it thinks fit.

(6) A decision in terms of subsection (1) to cancel or suspend a licence shall not have any effect—

- (a) until the expiry of the period referred to in subsection (5); or
- (b) where an appeal is noted in terms of subsection (5), until the appeal lapses or is withdrawn or abandoned or the decision is confirmed;

whichever is the later.

(7) Where in terms of this section—

- (a) a licence referred to in subsection (1) of section 102 of the Liquor Act [*Chapter 14:12*] has been cancelled, that section shall apply, *mutatis mutandis*, in respect of the cancellation;
- (b) a licence in terms of the Casino Act [*Chapter 10:03*] has been cancelled, the Minister referred to in subsection (1) of section 13 of that Act shall publish notice of the cancellation in the *Gazette*.

9 Court to forward record of certain proceedings to disciplinary authority

(1) In this section—

“disciplinary authority”, in relation to—

- (a) a professional person, means the council, tribunal or other body which has power under any enactment to regulate the conduct of the professional person in regard to his profession or calling;
- (b) a financial organization, means the person who, in terms of the Banking Act [*Chapter 24:01*], the Building Societies Act [*Chapter 24:02*] or the Insurance Act [*Chapter 24:07*], as the case may be, is responsible for registering or licensing the financial organization;

“professional person” means a person who engages in any profession or calling for which he is required to be registered under any enactment.

(2) Where a court—

- (a) convicts a professional person of an offence in terms of section *three, four* or *six*; or
- (b) awards damages against a professional person in any proceedings brought against him in terms of section *seven*;

the court shall cause a copy of the record of the proceedings, or a copy of such portion of the record as the court considers to be material, to be forwarded to the professional person's disciplinary authority.

(3) Where a court—

(a) convicts a financial organization or an employee of a financial organization of an offence in terms of section *three* or *five*; or

(b) awards damages against a financial organization or an employee of a financial organization in any proceedings brought against the organization or employee in terms of section *seven*;

the court shall cause a copy of the record of the proceedings, or a copy of such portion of the record as the court considers to be material, to be forwarded to the financial organization's disciplinary authority.

10 Defences

(1) It shall be a defence, in any criminal proceedings for an offence under section *three*, *four*, *five* or *six* and in any civil proceedings under section *seven*, for the accused person, defendant or respondent, as the case may be, to show that though he committed the act alleged against him—

(a) the act was justified in order to secure compliance with any law; or

(b) he committed the act on the grounds of the political opinions of the person or class of persons against whom the act was committed, but he did so because—

(i) where the act was committed in relation to immovable property, the proprietor of the immovable property was a *bona fide* political organization and the immovable property was reserved for the exclusive use of members of supporters of that political organization or persons of a particular persuasion; or

(ii) where the act was committed in relation to the supply or provision of a commodity, the commodity concerned was an emblem, token or other article intended to identify the supporters of a particular political organization or persons of a particular persuasion; or

(iii) where the act was committed in relation to the provision of a service or facility, the service or facility was provided exclusively to members of a *bona fide* political organization to enable them to further the legitimate objects of that organization; or

(c) he committed the act on the grounds of the creed of the person or class of persons against whom the act was committed, but—

(i) where the act was committed in relation to immovable property, he committed the act because the proprietor of the immovable property was a *bona fide* religious organization and the immovable property was reserved for the exclusive use of members or supporters of that religious organization or adherents of a particular religious belief; or

(ii) where the act was committed in relation to the supply or provision of a commodity, he committed the act because the commodity concerned was an emblem, token or other article intended to identify the members of a particular religious organization or adherents of a particular religious belief; or

(iii) where the act was committed in relation to the provision of a service or facility, he committed the act because the service or facility was provided exclusively to members of a *bona fide* religious organization or to adherents of a particular religious belief, to enable them to further the legitimate objects of that organization or to practise or propagate their belief; or

(iv) in the case of an offence under section *six*, he made or communicated the statement concerned in good faith and with the intention of fairly and temperately criticising any tenet of that creed;

or

(d) he committed the act on the grounds of the gender of the person or class of persons against whom the act was committed, but—

(i) the act was reasonably justified in view of physiological differences between persons of different gender; or

(ii) the act was reasonably necessary in the interests of public morality; or

(iii) where the act was committed in relation to immovable property, the immovable property concerned was reserved for the use of persons of the other gender.

(2) Subsection (1) shall not be construed as rendering lawful any conduct that is unlawful under any other law, nor as denying any person affected by such conduct any remedy he may have under any other law.