

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO  
NATIONAL CREDIT  
BILL**

**[B 18—2005]**

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*(As agreed to by the Portfolio Committee on Trade and Industry  
(National Assembly))*

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**[B 18A—2005]**

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**AMENDMENTS AGREED TO****NATIONAL CREDIT BILL  
[B 18—2005]**

## CLAUSE 1

1. On page 8, from line 38, to omit the definition of “civil court”.
2. On page 9, in line 2, after “mortgage”, to insert “agreement”.
3. On page 9, in line 47, after “mortgage”, to insert “agreement”.
4. On page 9, in line 59, to omit “union” and to substitute “co-operative”.
5. On page 9, to omit line 60, and to substitute “financial services to its members”.
6. On page 10, in line 20, after “income” to insert “or”.
7. On page 10, in line 22, after “disaster” to omit “or”.
8. On page 10, from line 23, to omit paragraph (*d*) and to substitute:

“affecting the consumer, a person who is dependent upon the consumer or a person for whom the consumer is financially responsible”;
9. On page 10, from line 28, to omit the definition of “incidental credit agreement” and to substitute:

“incidental credit agreement” means an agreement, irrespective of its form, in terms of which an account was tendered for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer over a period of time and either or both of the following conditions apply:

  - (a) a fee, charge or interest became payable when payment of an amount charged in terms of that account was not made on or before a determined period or date; or
  - (b) two prices were quoted for settlement of the account, the lower price being applicable if the account is paid on or before a determined date, and the higher price being applicable due to the account not having been paid by that date”.
10. On page 10, in line 35, to omit “34(1)” and to substitute “25(1)(a)”.
11. On page 10, in line 38, to omit “and”.
12. On page 10, in line 44, after “agreement” to insert “and”.
13. On page 10, after line 44, to add the following paragraph:

(*d*) “interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred”;
14. On page 10, in line 46, after “unincorporated” to insert “other than stokvels”.

15. On page 11, in line 11, to omit “(1)”.
16. On page 11, in line 21, to omit the definition of “mortgage” and to substitute “mortgage” means a pledge of immovable property that serves as security for a mortgage agreement”
17. On page 11, after line 21, to insert the following definition:
 

“mortgage agreement” means a credit agreement that is secured by a pledge of immovable property”.
18. On page 11, from line 22, to omit the definition of “non-returnable goods”.
19. On page 11, from line 39, to omit the definition of “outstanding account”.
20. On page 12, from line 1, to omit the definition of “prepaid transaction”.
21. On page 12, in line 14, to omit “wholly” and to substitute “principally”.
22. On page 12, in line 15 after “Act” to insert “”, other than an act or omission that constitutes an offence under this Act,”
23. On page 12, in line 18, after “bureau” to insert “or” and to omit “or employer”.
24. On page 13, in line 1, to omit “small” and to substitute “short”.
25. On page 13, in line 1, to omit “telephonic” and to substitute “telecommunication”.
26. On page 13, in line 7, after “credit” to insert “agreements”.

## CLAUSE 2

1. On page 13, from line 35, to omit subsection (3) and to substitute:
 

(3) If a provision of this Act requires a document to be signed or initialed by a party to a credit agreement, that signing or initialing may be effected by use of—

  - (a) an advanced electronic signature, as defined in the Electronic Communications Act, 2002 (Act No. 25 of 2002); or
  - (b) an electronic signature as defined in the Electronic Communications Act, 2002 (Act No. 25 of 2002), provided that—
    - (i) the electronic signature is applied by each party in the physical presence of the other party or an agent of the party; and
    - (ii) the credit provider must take reasonable measures to prevent the use of the consumer’s electronic signature for any purpose other than the signing or initialing of the particular document that the consumer intended to sign or initial”.

## CLAUSE 4

1. On page 14, in line 55, after “turnover” to insert:
 

“, together with the combined asset value or annual turnover of all related juristic persons”.

2. On page 15, in line 4, to omit “or”.
3. On page 15, in line 6, after “Africa” to insert “or”.
4. On page 15, after line 6, to insert the following paragraph:
  - (d) “a credit agreement in respect of which the credit provider is located outside the Republic, approved by the Minister on application by the consumer in the prescribed manner and form”.
5. On page 15, after line 31, to insert:
  - (d) “a juristic person is related to another juristic person if—
    - (i) one of them has direct or indirect control over the whole or part of the business of the other; or
    - (ii) a person has direct or indirect control over both of them”.
6. On page 15, from line 55, to omit subsection (6) and to substitute:
  - (6) “For the purposes of this Act, if a consumer pays fully or partially for goods or services through a charge against a credit facility, which is provided by a third party, the person who sells the goods or services is not regarded to have entered into a credit agreement with the consumer merely by virtue of that payment”;

#### CLAUSE 5

Clause rejected.

#### NEW CLAUSE

##### **Limited application of the Act to incidental credit agreements**

5. (1) Only the following provisions of this Act apply with respect to an incidental credit agreement:
  - (a) Chapters 1, 2, 7, 8 and 9;
  - (b) Chapter 3, sections 54 and 59;
  - (c) Chapter 4, Parts A and B;
  - (d) Chapter 4, Part D, except to the extent that it deals with reckless credit;
  - (e) Chapter 5, Part C, subject to subsection (3)(a);
  - (f) Chapter 5, Parts D and E, once the incidental credit agreement is deemed to have been made in terms of subsection (2); and
  - (g) Chapter 6, Parts A and C.
- (2) The parties to an incidental credit agreement are deemed to have made that agreement on the date that is 20 business days after—
  - (a) the supplier of the goods or services that are the subject of that account, first charges a late payment fee or interest in respect of that account; or
  - (b) a pre-determined higher price for full settlement of the account first becomes applicable, unless the consumer has fully paid the settlement value before that date.
- (3) A person may only charge or recover a fee, charge or interest—
  - (a) in respect of a deferred amount under an incidental credit agreement as provided for in section 101(d), (f) and (g) subject to any maximum rates of interest imposed in terms of section 105; or
  - (b) in respect of an unpaid amount contemplated in paragraph (a) of

the definition of “incidental credit agreement” only if the credit provider has disclosed, and the consumer has accepted, the amount of such a fee, charge or interest, or the basis on which it may become payable, on or before the date on which the relevant goods or services were supplied”.

#### CLAUSE 8

1. On page 17, in line 6, after “insurance” to insert “or credit extended by an insurer solely to maintain the payment of premiums on a policy of insurance;”.
2. On page 17, in line 25, to omit subparagraph (i).
3. On page 17, in line 32, to omit “5(3)” and to substitute “5(2)”.
4. On page 17 in line 34, after “mortgage” to insert “agreement”.
5. On page 17, after line 45, to insert:
  - (6) If, as contemplated in subsection (1)(d), a particular credit agreement constitutes both a credit facility as described in subsection (3) and a credit transaction in terms of subsection (4)(d)—
    - (a) subject to paragraph (b) that agreement is equally subject to any provision of this Act that applies specifically or exclusively to either—
      - (i) credit facilities; or
      - (ii) mortgage agreements or secured loans, as the case may be, and
    - (b) for the purpose of applying—
      - (i) section 108 that agreement must be regarded as a credit facility; or
      - (ii) section 4(1)(b) read with section 9(4), that agreement must be regarded as a large agreement if it is a mortgage agreement”.

#### CLAUSE 9

1. On page 17, in line 54, after “mortgage” to insert “agreement”.
2. On page 18, in line 1, after “mortgage” to insert “agreement”.
3. On page 18, in line 5, after “mortgage” to insert “agreement”.

#### CLAUSE 10

1. On page 18, in line 16, to omit “union or”.
2. On page 18, in line 17, to omit “union or”.

#### CLAUSE 15

1. On page 20, in line 28, to omit “related”.

#### CLAUSE 16

1. On page 20, in line 50 to omit “the Tribunal” and to substitute “a court”.

## CLAUSE 19

1. On page 22, in line 32, to omit “and objects”.
2. On page 22, in line 42, after “members”, to insert “at least two of whom must be knowledgeable on consumer matters”.

## CLAUSE 27

1. On page 25, in line 50 to omit paragraph (c).

## CLAUSE 40

1. On page 29, in line 5, to omit “that arise from outstanding accounts”.
2. On page 29, from line 7, to omit “that arise from outstanding accounts”.

## CLAUSE 41

1. On page 29, in line 48, after “a” to insert “credit”.
2. On page 29, in line 49, before “of” to insert “in respect”.
3. On page 29, in line 49, after the first “credit” to insert “agreements”
4. On page 29, in line 50, to omit “union”.

## CLAUSE 43

1. On page 30, in line 46, to omit “minimum” and to substitute “appropriate”.
2. On page 30, from line 48, to omit “”, at least equivalent to those prescribed for debt counsellors”.
3. On page 30, in line 54, to omit “and”.
4. On page 30, in line 58, after “procedures” to insert “; and”.
5. On page 30, after line 58, to add the following paragraph:

(d) is registered with the South African Revenue Services.

## CLAUSE 46

1. On page 31, to omit line 37.
2. On page 32, after line 2, to insert:
  - “(4) In addition to the disqualifications set out in subsection (3), a natural person may not be registered as a debt counsellor if that person is—
  - (a) subject to an administration order as contemplated in section 74 of the Magistrates’ Court Act, 1944 (Act No. 32 of 1944);
  - (b) subject to debt re-arrangement as contemplated in sections 86 and 87; or
  - (c) engaged in, employed by or acting as an agent for a person that is engaged in—

- (i) debt collection;
- (ii) the operation of a credit bureau;
- (iii) credit provision; or
- (iv) any other activity prescribed by the Minister on the grounds that there is an inherent conflict of interest between that activity and debt counselling”.

#### CLAUSE 48

1. On page 32, in line 40, to omit “ and”.
2. On page 32, in line 44, after “authority” to insert “and”.
3. On page 32, after line 44, to add the following paragraph:

“(c) registration with the South African Revenue Services.”

#### CLAUSE 51

1. On page 34, in line 10, to omit “contemplated in section 40(2)(c)”.
2. On page 34, in line 10, after “activities” to insert “in their own names at or from more than one location or premises, as contemplated in section 40(2)(c)”.

#### CLAUSE 54

1. On page 35, to omit line 48, and to substitute:

“(5) Failure to comply with a notice issued in terms of this section is an offence”.

#### CLAUSE 55

1. On page 36, after line 19, to add the following subsection:

(6) If a person fails to comply with a compliance notice as contemplated in this section without raising an objection in terms of section 56, the National Credit Regulator may refer the matter—

- (a) to the National Prosecuting Authority, if the failure to comply constitutes an offence in terms of this Act; or
- (b) otherwise, to the Tribunal for an appropriate order.

#### CLAUSE 57

1. On page 36, from line 36, to omit subsection (2) and to substitute:

“(2) In any circumstance contemplated in subsection (1) concerning a registrant that is a regulated financial institution, the National Credit Regulator may—

- (a) impose conditions on the registration of that person, consistent with its licence;
- (b) refer the matter to the regulatory authority that licensed that regulated financial institution, with a request that the regulatory authority review that licence in the circumstances; or

(c) at the request, or with the consent, of the regulatory authority that licensed that regulated financial institution, request the Tribunal to cancel the registration”.

2. On page 36, in line 45, after “is” to insert “or may be”, after “(2)” to insert “(b)”.
3. On page 36, in line 46, omit “and”.
4. On page 36, in line 48, after “review”. to insert “and”.
5. On page 36, after line 48, to add the following subparagraph:

“(c) may request, or consent to, the National Credit Regulator filing a request with the Tribunal as contemplated in subsection (2)(c)”.

#### CLAUSE 61

1. On page 37, in line 47, after “association” to insert “of persons”.
2. On page 38, in line 38, to omit “primary or predominant”.
3. On page 38, in line 39, after “of” to insert “unfair”.
4. On page 38, in line 46, after “136” to insert “, which must refer the complaint to the Equality Court, if the complaint appears to be valid”.
5. On page 38, from line 47, to omit subsection (7).
6. On page 38, in line 51, to omit “The Tribunal or a” and to substitute “A”.

#### CLAUSE 68

1. On page 41, in line 47, after “extent” to insert “permitted or”.
2. On page 41, from line 52, to omit subsection (2) and to substitute:
 

(2) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

#### CLAUSE 69

1. On page 42, in line 9, to omit “ a prepaid transaction” and to substitute “an incidental credit agreement”.
2. On page 42, in line 11, after “information” to insert “subject to subsection (6)”.
3. On page 42, from line 44, to omit subsection (6) and to substitute
 

“(6) The Minister may prescribe alternative requirements, in place of any of those set out in subsection (2), with respect to developmental credit agreements”.



## CLAUSE 70

1. On page 43, in line 28, after “Act” to insert “upon payment of the credit bureau’s fee except where the Act explicitly provides that no fee be charged”.
2. On page 43, in line 28, to omit “and”.
3. On page 43, in line 31, after “person” to insert “and”.
4. On page 43, after line 31, to insert the following subparagraph:
  - “(i) not knowingly or negligently provide a report to any person containing inaccurate information”.
5. On page 43, from line 39, to omit subsection (4) and to substitute:
  - “(4) The Minister may prescribe—
    - (a) standards for the filing, retention and reporting of consumer credit information by credit bureaux, in addition to, or in furtherance of the requirements set out in this section; and
    - (b) maximum fees that may be charged to a consumer for accessing consumer credit information concerning that person”.
6. On page 43, from line 54, to omit subsection (6) and to substitute:
  - “(6) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence”.

## CLAUSE 71

1. On page 43, in line 56 after “adjustment” to insert “or judgment”.
2. On page 44, after line 24, to add the following subsection:
  - “(6) Upon receiving a copy of a court order rescinding any judgment, a credit bureau must expunge from its records all information relating to that judgment”.
3. On page 44, from line 25, to omit subsection (6) and to substitute:
  - (7) “Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence”.

## CLAUSE 72

1. On page 44, in line 39, after “after” to insert “successfully”.
2. On page 44, in line 51, to omit the first “the” and to substitute “any”.
3. On page 44, in line 51, after “information” to insert “to a registered credit bureau or to the National Credit Register”.
4. On page 45, in line 5, to omit “(5)”, and to substitute “(7)”.

5. On page 45, after line 10, to insert:
 

“(5) A credit bureau or the National Credit Register may not report information that is challenged until the challenge has been resolved in terms of subsection (3)(a) or (b)”.
6. On page 45, from line 18, to omit subsection (6) and to substitute:
 

“(7) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.”

#### NEW CLAUSE

1. On page 45, after line 19, to insert the following clause:

#### **Verification, review and removal of consumer credit information**

**73.** (1) The Minister must, within a period of six months after the effective date, prescribe—

- (a) the nature of, time-frame, form and manner in which consumer credit information held by credit bureaux must be reviewed, verified, corrected or removed; and
- (b) the time-frame and schedule for the exercise by consumers of their rights in terms of section 72(1), within a period of one year after the regulations being promulgated.

(2) When prescribing a matter contemplated in subsection (1), the Minister must—

- (a) consider amongst other things—
  - (i) the predictive nature of such information;
  - (ii) the socio-economic impact on consumers of the removal of such information; and
- (b) engage in consultation with affected stakeholders.

(3) Any regulations to be made in terms of this section must be submitted to the relevant Parliamentary Committee for the necessary consultation prior to their promulgation.

#### CLAUSE 74

1. On page 46, in line 23, to omit “Subsection (2) does” and to substitute “Subsections (2) to (4) do”.
2. On page 46, in line 23, after “credit” to insert “agreements”.

#### CLAUSE 75

1. On page 46, after line 57, to add the following subsection:
 

“(5) In any advertisement concerning the granting of credit, a credit provider must state or set out the interest rate and other credit costs in the prescribed manner and form”.
2. On page 46, in line 58, after “credit” to insert “agreements”.

#### CLAUSE 76

1. On page 47, in line 7, to omit “written”.
2. On page 47, in line 7, after solicitation, to insert “by or on behalf of a credit provider”.

3. On page 47, in line 8, to omit “of the following” and to substitute “with the prescribed”.
4. On page 47, in line 8, after “information” to insert “for the particular type of solicitation”.
5. On page 47, from line 9, to omit paragraphs (a) to (f).
6. On page 47, from line 17, to omit subsection (2).

CLAUSE 77

Clause rejected.

CLAUSE 78

1. On page 47, after line 39 to insert:

“provided that any credit extended in terms of paragraph (a) to (c) is reported to the National Credit Register in the prescribed manner and form, and further provided that in respect of any credit extended in terms of paragraph (b), reasonable proof of the existence of the emergency as defined in section 1 is obtained and retained by the credit provider”;

CLAUSE 79

1. On page 48, in line 14, after the second “facility” to insert “and”.

CLAUSE 80

1. On page 48, in line 21, after “made” to insert “or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119(4)”.

CLAUSE 83

1. On page 49, in line 46, after “consumer’s” to insert “rights and”.

CLAUSE 89

1. On page 53, from line 8, to omit paragraph (b).
2. On page 53, in line 12, after “minor” to insert “unassisted by a guardian”.
3. On page 53, from line 22, to omit “unless the agreement is an incidental credit agreement”.
4. On page 53, in line 47, to omit “or the Tribunal”.
5. On page 53, in line 58, to omit “Tribunal or”.
6. On page 54, in line 1, to omit “Tribunal or”.

CLAUSE 90

1. On page 54, in line 52, after “provider” to insert “in respect of any matter related to the granting of credit in terms of this Act”.
2. On page 55, in line 9, to omit “person” and to substitute “credit provider”.
3. On page 55, in line 20, to omit “the Tribunal or”.

CLAUSE 92

1. On page 56, in line 5, before “For” to insert “Subject only to subsection (4), sections 81 and 101(1)(d)(ii)”.
2. On page 56, to omit line 17.
3. On page 56, from line 18, to omit subsection (4) and to substitute:

“(4) If credit is extended for the purchase of an item with limited availability, the credit provider may state that the quotation provided in terms of this section is subject to the continued availability of the item during the period contemplated in subsection (3)”.

CLAUSE 93

1. On page 56, to omit line 51.

CLAUSE 94

1. On page 57, from line 1, to omit paragraph (b).

CLAUSE 102

1. On page 59, in line 39, after “mortgage” to insert “agreement”.
2. On page 59, after line 42, to insert the following paragraph:

“(a) an initiation fee as contemplated in section 101(1)(b), if the consumer has been offered and declined the option of paying that fee separately”;
3. On page 59, in line 45, to omit “or”.
4. On page 59, in line 46, after “fees” to insert “or”.
5. On page 59, after line 46, to insert the following paragraph:

“(f) subject to section 106, the premiums of any credit insurance payable in respect of that credit agreement”.

CLAUSE 103

1. On page 60, from line 7, to omit subsection (1) and to substitute:

“(1) Subject to subsection (5), the interest rate applicable to an amount in default or an overdue payment under a credit agreement may not exceed the highest interest rate applicable to any part of the principal debt under that agreement”.

## CLAUSE 104

1. On page 60, in line 31, to omit “or a credit facility”.
2. On page 60, in line 39, after “than” to insert “30 business days after”.
3. On page 60, in line 41, after “rate” to insert “and any further prescribed information”.
4. On page 60, in line 42, after the first “rate” to insert “as contemplated in section 103(4)”.
5. On page 60, from line 43, to omit subsections (4) and (5).

## CLAUSE 106

Clause rejected.

## NEW CLAUSE

**Credit insurance**

**106.** (1) A credit provider may require a consumer to maintain during the term of their credit agreement—

- (a) credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer’s outstanding obligations to the credit provider in terms of their agreement; and
- (b) either—
  - (i) in the case of a mortgage agreement, insurance cover in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or
  - (ii) in any other case, insurance cover against damage or loss of any property other than property referred to in subparagraph (i), not exceeding, at any time during the life of the credit agreement, the total of the consumer’s outstanding obligations to the credit provider in terms of their agreement.

(2) Despite subsection (1), a credit provider must not offer or demand that the consumer purchase or maintain insurance that is—

- (a) unreasonable; or
- (b) at an unreasonable cost to the consumer, having regard to the actual risk and liabilities involved in the credit agreement.

(3) In addition to insurance that may be required in terms of subsection (1), a credit provider may offer a consumer optional insurance in relation to the obligations of the consumer under the credit agreement or relating to the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement.

(4) If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in subsection (1) or (3)—

- (a) the consumer must be given, and be informed of, the right to waive that proposed policy and substitute a policy of the consumer’s own choice, subject to subsection (6);
- (b) such policy must provide for payment of premiums by the consumer—
  - (i) on a monthly basis in the case of small and intermediate agreements; or

- (ii) on a monthly or annual basis in the case of large agreements, for the duration of the credit agreement; and
- (c) in the case of an annual premium the premium must be recovered from the consumer within the applicable year.

(5) With respect to any policy of insurance arranged by a credit provider as contemplated in subsection (4), the credit provider must—

- (a) not add any surcharge, fee or additional premium above the actual cost of insurance arranged by that credit provider;
- (b) disclose to the consumer in the prescribed manner and form—
  - (i) the cost to the consumer of any insurance supplied; and
  - (ii) the amount of any fee, commission, remuneration or benefit receivable by the credit provider, in relation to that insurance;
- (c) explain the terms and conditions of the insurance policy to the consumer and provide the consumer with a copy of that policy; and
- (d) be a loss payee under the policy up to the settlement value at the occurrence of an insured contingency only and that any remaining proceeds of the policy must be paid to the consumer.

(6) If the consumer exercises the right under subsection 4(a) to substitute an insurance policy of the consumer's own choice, the credit provider may require the consumer to provide the credit provider with the following written directions—

- (a) a valid direction in the prescribed manner and form requiring and permitting the credit provider to pay any premiums due under that policy during the term of the credit agreement on behalf of the consumer as they fall due, and to bill the consumer for the amount of such premiums;
  - (i) on a monthly basis for small and intermediate agreements; and
  - (ii) on a monthly or annual basis for large agreements; and
- (b) a valid direction to the insurer in the prescribed manner and form, naming the credit provider as a loss payee under the policy up to the settlement value at the happening of an insured contingency, and requiring the insurer, if an insured event occurs, to settle the consumer's obligation under the credit agreement as a first charge against the proceeds of that policy at any time during the term of the credit agreement.

(7) If the premiums under an insurance policy contemplated in this section are paid annually, the consumer is entitled, upon settlement of the credit agreement, to a refund of the unused portion of the final year's premium.

#### CLAUSE 107

1. On page 63, to omit line 8.

#### CLAUSE 108

1. On page 63, in line 35 after "mortgage" to insert "agreement".

#### CLAUSE 111

1. On page 64, from line 33, to omit all the words from "within" up to and including "shown" in line 35.
2. On page 64, in line 43, to omit "at least 20 business days after complying" and to substitute "the credit provider has complied".

## CLAUSE 116

1. On page 65, in line 42, to omit “or”.
2. On page 65, in line 43, after “made” to insert “ unless the change is effected in terms of section 119(1)(c)”.
3. On page 65, after line 44, to add:
  - “(c) the change is recorded in writing and signed by the parties; or
  - (d) any oral change is recorded electromagnetically and subsequently reduced to writing”.

## CLAUSE 121

1. On page 67, from line 28, to omit subsection (1) and to substitute:

“(1) This section applies only in respect of a lease or an instalment agreement entered into at any location other than the registered business premises of the credit provider”.
2. On page 67, from line 40, to omit all the words after “(b)” up to and including “74(2)(b)” in line 41.
3. On page 67, in line 50, to omit “the Tribunal” and to substitute “ a court”.
4. On page 67, in line 51, to omit “the Tribunal” and to substitute “a court”.
5. On page 67, in line 53, to omit “the Tribunal” and to substitute “a court”.
6. On page 67, in line 55, to omit “Tribunal” and to substitute “court”.
7. On page 68, from line 3, to omit subsection (6).

## CLAUSE 122

1. On page 68, from line 9, to omit “other than an agreement with respect to non-returnable goods”.

## CLAUSE 123

1. On page 68, from line 18, to omit subsection (2) and to substitute:

“(2) If a consumer is in default under a credit agreement, the credit provider may take the steps set out in Part C of Chapter 6 to enforce and terminate that agreement”.

## CLAUSE 124

1. On page 69, in line 3, to omit the third “the” and to substitute “that”.
2. On page 69, in line 4, to omit “a” and to substitute “that”.

## CLAUSE 125

1. On page 69, in line 34, to omit “and”.

2. On page 69, from line 35, to omit paragraph (c) and to substitute:
  - (c) in the case of a large agreement—
    - (i) at a fixed rate of interest, an early termination charge no more than a prescribed charge or, if no charge has been prescribed, a charge calculated in accordance with subparagraph (ii); or
    - (ii) other than at a fixed rate of interest, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period equal to the difference between—
      - (aa) three months; and
      - (bb) the period of notice of settlement if any, given by the consumer”.

#### CLAUSE 127

1. On page 69, in line 53, to omit subsection (1).
2. On page 70, from line 17, to omit all the words after “agreement” up to and including “value” in line 19.
3. On page 70, in line 23, after “agreement;” to insert “or”.
4. On page 70, from line 24, to omit paragraph (b).
5. On page 70, from line 30, to omit “or if no nominated buyer purchases the goods when they are offered,”

#### CLAUSE 129

1. On page 71, in line 25, to omit the second “to” and to substitute “that”.
2. On page 71, in line 26, to omit “that” and to substitute “refer”.
3. On page 71, in line 26, to omit “be referred ”.
4. On page 71, in line 27, to omit “the”.
5. On page 71, in line 34, to omit “86(9)” and to substitute “86(10)”.
6. On page 71, in line 39, after “time” to insert “before the credit provider has cancelled the agreement”.
7. On page 71, in line 49, to omit “or”.
8. On page 71, in line 50, after “agreement” to insert “or”.
9. On page 71, after line 50, to add the following paragraph:
  - (c) “the termination thereof in accordance with section 123”.

#### CLAUSE 130

1. On page 71, in line 51, to omit “Magistrate’s” and to substitute “a”.
2. On page 72, in line 20, to omit “terms of Chapter VIII or IX of the Magistrates’ Courts Act” and to substitute “a court”.
3. On page 72, from line 57, to omit “or the Tribunal, as the case may be,”.



4. On page 72, from line 60, to omit paragraph (d) and to substitute:
  - “(d) there is a matter pending before the Tribunal, as contemplated in subsection (3)(b), the court may—
    - (i) adjourn the matter before it, pending a determination of the proceedings before the Tribunal; or
    - (ii) order the Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or”

#### CLAUSE 134

1. On page 73, in line 45, after “referred” to insert “only”.
2. On page 73, in line 50, to omit “if there is no ombud with jurisdiction as contemplated in paragraph (a), or”.
3. On page 74, in line 37, after (4), to insert “(b)”.

#### CLAUSE 136

1. Clause rejected.

#### NEW CLAUSE

#### **“Initiating a complaint to National Credit Regulator**

**136.** (1) Any person may submit a complaint concerning an alleged contravention of this Act to the National Credit Regulator in the prescribed manner and form.

(2) The National Credit Regulator may initiate a complaint in its own name”.

#### CLAUSE 137

1. On page 75, from line 15, to omit paragraph (b).
2. On page 75, in line 19, to omit “or 131”.
3. On page 75, in line 21, to omit “or a debt re-arrangement application”.

#### CLAUSE 140

1. On page 76, in line 38, to omit “or”.
2. On page 76, in line 40, after “that” to insert “a person has engaged in prohibited conduct”;
3. On page 76, from line 41, to omit subparagraphs (i),(ii) and (iii) and to substitute:
  - “(c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act; or
  - (d) refer the matter to the National Prosecuting Authority, if the complaint concerns an offence in terms of this Act.”

4. On page 76, from line 44, to omit subsection (2) and to substitute:
  - “(2) In the circumstances contemplated in subsection (1)(b), the National Credit Regulator may refer the matter—
  - (a) to the consumer court of the province in which the consumer resides, or the consumer court of the province in which the credit provider has its principal place of business in the Republic, if there is a consumer court in such a province, if the National Credit Regulator believes that the issues raised by the complaint can be dealt with expeditiously and fully by such a referral; or
  - (b) to the Tribunal”.
5. On page 76, in line 58, to omit “(b)”.
6. On page 77, in line 5, to omit “(b)”.
7. On page 77, from line 16, to omit all the words from “(i)” up and including “(ii)” in line 17.

#### CLAUSE 141

1. On page 77, in line 27, after “61” to insert “or an offence in terms of this Act,”

#### CLAUSE 143

1. On page 78, from line 37, to omit subsection (2)”.

#### CLAUSE 148

1. On page 79, in line 22, to omit “subsection (3) and”.
2. On page 79, from line 28, to omit all the words from “(i)” up to and including “(ii)” in line 30.
3. On page 79, from line 31, to omit subsection (3).

#### CLAUSE 150

1. Clause rejected.

#### NEW CLAUSE

##### “Orders of Tribunal

**150.** In addition to its other powers in terms of this Act, the Tribunal may make an appropriate order in relation to prohibited conduct or required conduct in terms of this Act, including—

- (a) declaring conduct to be prohibited in terms of this Act;
- (b) interdicting any prohibited conduct;
- (c) imposing an administrative fine in terms of section 151, with or without the addition of any other order in terms of this section;
- (d) confirming a consent agreement in terms of this Act as an order of the Tribunal;
- (e) condoning any non-compliance of its rules and procedures on good cause shown;

- (f) confirming an order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act.
- (g) suspending or cancelling the registrant's registration, subject to section 57(2) and (3);
- (h) requiring repayment to the consumer of any excess amount charged, together with interest at the rate set out in the agreement; or
- (i) any other appropriate order required to give effect to a right, as contemplated in this Act.

#### CLAUSE 151

1. On page 81, in line 13, to omit "penalty" and to substitute "fine".
2. On page 81, in line 15, to omit "subsection (1)" and to substitute "this Act".
3. On page 81, in line 18, after "year;" to insert "or".

#### CLAUSE 152

1. On page 81, in line 50, to omit "penalty" and to substitute "fine".
2. On page 81, in line 52, to omit "penalty" and to substitute "fine".

#### CLAUSE 156

1. On page 83, in line 48, to omit "firm" and to substitute "juristic person".

#### CLAUSE 163

1. Clause rejected.

#### NEW CLAUSE

**163.** (1) A credit provider must ensure that its employees or agents are trained in respect of the matters to which this Act applies.

(2) If a credit provider makes use of agents for solicitation, completion or conclusion of credit agreements,—

(a) the agents must show an identification card, in the prescribed manner and form, to any person with whom the agent interacts in the solicitation, completion or conclusion of credit agreements; and

(b) the credit provider must maintain a register in the prescribed manner and form of all agents.

(3) If a person who is not an employee or agent of a credit provider, solicits, completes or concludes a credit agreement for or on behalf of a credit provider or a consumer:

(a) That person must be identified by name and identity number in the credit agreement;

(b) that person must disclose to the consumer the amount of any fee or commission that will be paid if the agreement is concluded; and

(c) any fee or commission to be charged to the consumer—

(i) must not exceed the prescribed amount; and

(ii) may be paid to that person only if the agreement is concluded."

## CLAUSE 164

1. On page 85, from line 31, to omit “the Tribunal or“
2. On page 85, from line 33, to omit subsection (2) and to substitute:
 

“(2) In any action in a civil court, other than a High Court, if a person raises an issue concerning this Act or a credit agreement which the Tribunal—

  - (a) has previously considered and determined that court—
    - (i) must not consider the merits of that issue; and
    - (ii) must apply the determination of the Tribunal with respect to the issue; or
  - (b) has not previously determined, that court-
    - (i) may consider the merits of that issue, or
    - (ii) refer the matter to the Tribunal for consideration and determination.

## SCHEDULE 2

1. On page 93, from line 4, to omit all the words from “Act” up to and including “members” in line 18.
2. On page 93, after line 64 to insert:

Act No 52 of 1998	Long-term Insurance Act, 1998	The amendment of section 44 by the insertion of a new subsection 5:— “(5) This section does not apply if the long—term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies.
Act No 53 of 1998	Short—term Insurance Act, 1998	The amendment of section 43 by the insertion of a new subsection 6:— “(6) This section does not apply if the short-term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies.

3. On page 94, in line 10, to omit “A” and to substitute with “As of 1 July 2006, a”.
4. On page 94, after line 15, to insert a new subparagraph:
 

“(2) With regard to any credit agreement concluded on or before 1 July 2006, which is subject to a payment system that provides preferential treatment to a payment instruction over any other payment instruction in that system, other than preferential treatment prescribed by law, such preferential treatment must be terminated on or before 31 December 2007.”

5. On page 94, from line 36, in the far right column, to omit all the words from “The” up to and including “rescind” in line 53 and to substitute:
- (a) “Section 8 of the Value-Added Tax Act, 1991 is hereby amended by the substitution for subsection (3) of the following subsection:
- (3) For the purposes of this Act, a credit agreement to which section **[13 of the Credit Agreements Act, 1980 (Act 75 of 1980)]** 121 of the National Credit Act, 2005 applies, **[shall] will** be deemed not to be a supply of goods or services **[unless the credit receiver]** if the consumer has **[failed to]** exercised the right to rescind **[under that section to terminate the]** that agreement in the manner and within the time permitted **[period available to him under]** by that section”.
- (b) Section 9 of the Value-Added Tax Act, 1991 is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) where that supply is a supply to which section 8(3) refers, on the day after the last day of the period during which the recipient may exercise the right under **[section 13 of the Credit Agreements Act, 1980 (Act 75 of 1980)]** section 121 of the National Credit Act, 2005, to **[terminate]** rescind the agreement;”.

### SCHEDULE 3

1. On page 97, in line 5, after “date” to insert “except that section 5(3) does not apply in respect of a pre-existing incidental credit agreement.”
2. On page 97, in line 29, after agreements, to insert “subject to sub-item (3)”.
3. On page 97, in line 38, to omit “and”.
4. On page 97, after line 38, to insert the following:
 

“to the extent that a document or statement contemplated in terms of subparagraphs (i) or (ii) above has not already been provided to the consumer by the credit provider prior to the effective date; and”
5. On page 98, after line 28, to omit item 8 and to substitute with a new item 8:
 

“(8) As of the effective date—

  - (a) the assets, liabilities and employees of a regulatory institution designated by the Minister in terms of section 15A of the Usury Act, 1968 (Act No. 73 of 1968), are transferred to and are assets, liabilities and employees, respectively, of the National Credit Regulator; and
  - (b) any person appointed as an inspector or in any other capacity in terms of the Usury Act, 1968 (Act No. 73 of 1968), may be transferred to the National Credit Regulator.”





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