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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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GENERAL NOTICE

NOTICE 418 OF 2006

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER PROTECTION BILL, 2006

I, Mandisi Mphahlele, Minister of Trade and Industry, hereby publish the Consumer Protection Bill, 2006 for public comments.

Interested persons may submit their comments on the Bill to the following address:

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The closing date for comments is 26 May 2006

REPUBLIC OF SOUTH AFRICA**Department of Trade and Industry****BILL**

To promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection, provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to provide for harmonization of laws relating to the protection of consumers, to promote a consistent enforcement framework relating to consumer transactions and agreements, to establish the National Consumer Commission, to repeal the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), the Trade Practices Act, 1976 (Act No. 76 of 1976), the Sales and Service Matters Act, 1964 (Act No. 25 of 1964), the Business Names Act, 1960 (Act No. 27 of 1960), the Businesses Act, 1991 (Act No. 71 of 1991), the Price Control Act, 1964 (Act No. 25 of 1964), and Sections 2 to 13, and sections 16 to 17 of the Merchandise Marks Act, 1941 (Act No. 17 of 1941); and to make consequential amendments to various other Acts, and to provide for related incidental matters.

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

Preamble

The people of South Africa recognise –

That apartheid and other discriminatory laws of the past have burdened the nation with unacceptably high levels of poverty, illiteracy, and other forms of social and economic inequality;

That it is necessary to develop and employ innovative means to –

- (a) fulfil the rights of historically disadvantaged persons and to promote their full participation as consumers,
- (b) protect the interests of all consumers, ensure accessible, transparent, and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace; and
- (c) give effect to the internationally recognised customer rights;

That recent and emerging technological changes, and trading methods, patterns and agreements have brought, and will continue to bring, new benefits, opportunities and challenges to the market for consumer goods and services within South Africa; and

That it is desirable to promote an economic environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation and enhanced performance, and socially responsible use of environmental resources.

For the reasons set out above, and to give effect to the international law obligations of the Republic, the Parliament of the Republic of South Africa has enacted this Act in order to –

Promote and protect the economic interests of consumers;

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Improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs;

Promote sustainable and environmentally responsible consumption, and protect consumers from hazards to their health and safety;

Develop effective means of redress for consumers;

Promote and provide for consumer education, including education concerning the environmental, social and economic effects of consumer choices;

Facilitate the freedom of consumers to associate and form groups to advocate and promote their common interests; and

Promote consumer participation in decision making processes concerning the marketplace and the interests of consumers.

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Consumer Protection Bill, 2006

Chapter 1

Interpretation, Purpose and Application

PART A - INTERPRETATION

1. Definitions

In this Act -

“**advertisement**” means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon, or embedded within, any medium, by means of which a person seeks to bring to the attention of all or part of the public the existence or identity of a supplier, or the existence, nature, availability, properties, advantages or uses of, conditions on, or prices at which –

- (a) goods may be purchased, leased or otherwise acquired;
- (b) any service is available or may be arranged;

“**agreement**” means an arrangement or understanding between or among two or more parties, that purports to establish a relationship in law between those parties, with respect to an actual, intended or potential transaction in the ordinary course of business ;

“**alternative dispute resolution agent**” means a person providing services to assist in the resolution of consumer disputes through conciliation, mediation or arbitration;

“**applicable provincial consumer legislation**” means legislation enacted by a province concerning consumer protection;

“**apply**” when used in relation to a trade description, price, notice or any similar form of information, means to emboss, impress, engrave, etch, print, or weave into, work into or onto, annex or affix to, or incorporate within;

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“Board” means the governing body of the National Consumer Commission, established in accordance with section 94;

“business” means the continuous offer to supply, and the continual supply, of any goods or services to consumers for consideration by -

- (a) any natural or juristic person
- (b) an organ of state;
- (c) an entity controlled, directed or contracted by an organ of state to offer or supply any goods or services;
- (d) a public- private partnership; or
- (e) a person required in terms of any public regulation to offer or supply those goods or services to the public;

“Cabinet” means the body of the national executive described in section 91 of the Constitution;

“Commission” means the National Consumer Commission established by section 93;

“complainant” means -

- (a) a person who intends to file or has filed a complaint with the Commission in terms of Chapter 3, or on whose behalf a complaint has been filed by another person; or
- (b) the Commission in respect of a complaint that it has initiated either directly or at the request of a provincial consumer protection authority;

“confidential information” means -

- (a) information concerning –

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- (i) a person's identity, including the person's name, date of birth, identity number, marital status and family relationships, past and current addresses and other contact details, and related matters;
- (ii) a person's education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship, and related matters;
- (iii) a person's consumer history, including –
 - (aa) past transactions, applications for transactions, transaction histories or patterns, and related matters; and
 - (bb) applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt re-arrangement in terms of the National Credit Act, 2005 (Act No. 34 of 2005), incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters;
- (iv) a person's financial history, including the person's past and current income, assets and debts, and other matters within the scope of that person's financial means, prospects and obligations, as defined in section 78(3) of the National Credit Act, 2005, and related matters; and
- (b) other personal information by which a person may be identified that belongs to a person and is not generally available to or known by others;

“consideration” means anything of value given and accepted in exchange for goods or services, including -

- (a) money, property, a cheque, a token, a ticket, electronic credit, credit, debit or electronic chip, or similar object;
- (b) labour, barter or other goods or services;

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- (c) loyalty credit or award, coupon, or other right to assert a claim; or
- (d) any other thing, undertaking, promise, agreement or assurance,

irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly, or involves only the supplier and consumer, or other parties in addition to the consumer and supplier;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“consumer”, depending on the context, means-

- (a) a person to whom goods or services are advertised, offered, supplied, leased, sold or delivered in the course of business; or
- (b) a user of such goods or a recipient or beneficiary of such services; or
- (c) a person who has entered into an agreement or transaction with a supplier;

“consumer code” means a code of practice or similar document intended to safeguard or promote the interests of consumers by regulating the conduct of persons engaged in the supply of goods or services to consumers;

“consumer protection group” means an entity accredited in terms of section 83 to promote the interests or protection of consumers;

“consumer court” means a body of that name, or a consumer tribunal, established by or in terms of applicable provincial consumer legislation;

“continuous service” means the supply for consideration of a utility or service, alone or together with the supply of any goods that are essential for the utilization of that utility or service by the consumer, with the intent that, so long as the agreement remains in force, the supplier will make the service continuously available to be used, accessed or drawn upon –

- (a) from time to time as determined by the consumer; and

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-
- (b) with any frequency or in any amount as determined, accessed, required, demanded, or drawn upon by the consumer, subject only to any total use or cost limits set out in the agreement;

“credit agreement” means an agreement that meets the criteria set out in section 8 of the National Credit Act, 2005 (Act No. 34 of 2005)

“defect” means any characteristic of a good, component of a good, or aspect of a service supplied to a consumer, that renders the good component, or service, less useful, practicable or safe than persons generally are entitled to expect, having regard to the circumstances of the transaction, subject to s. 58 (4) and (5);

“device” means any visual representation or illustration capable of being reproduced upon a surface, whether by printing or otherwise, but does not include a trade mark;

“display”, when used –

- (a) in relation to any goods, means placing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those goods for purchase by, or lease or supply to, a consumer; or
- (b) in relation to a price, mark, notice or device, means to place or publish anything in a manner that reasonably creates an association between a good or service and the price at which the supplier is willing to sell or supply it;

“distributor” means a person who supplies any good to another person who, in the ordinary course of business, promotes that product for resale to prospective consumers;

“effective date”, with reference to any particular provision of this Act, means the date on which that provision came into operation;

“electronic communication” includes communication by telephone, email, fax, sms, bluetooth, wireless computer access and any similar technology or device;

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“estimate” means the projected total price for services to be provided, and goods or components to be supplied, by a supplier;

“equality court” has the meaning set out in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);

“goods” includes -

- (a) any tangible object offered in the ordinary course of business for sale, lease, or supply to consumers;
- (b) any medium on which information is or may be written or encoded, and any thing written or encoded on any such medium;
- (c) an interest in land or any other immovable property; and
- (d) gas, water and electricity;

“historically disadvantaged person” means a person -

- (a) who is one of a category of natural persons who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantageded by unfair discrimination on the basis of race;
- (b) that is an association, a majority of whose members are natural persons referred to in paragraph (a);
- (c) that is a juristic person other than an association, and natural persons referred to in paragraph (a) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or
- (d) that is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes;

“importer” means a person who brings goods, or causes them to be brought, from outside the Republic into the Republic, with the intention of making them available for supply in the ordinary course of business;

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“inspector” means a person appointed as such in terms of section 101;

“intermediary” means a person who, in the ordinary course of business and for remuneration or gain, engages in the business of –

- (a) representing another person with respect to the actual or potential -
 - (i) sale or lease of any goods, property or service; or
 - (ii) supply of any service for consideration;
- (b) accepting possession of any goods or property from a person for the purpose of offering it for sale; or
- (c) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person

but does not include an intermediary regulated in terms of other legislation.

“juristic person” includes a partnership, association or other body of persons corporate or unincorporated, and a trust if -

- (a) there are three or more individual trustees; or
- (b) the trustee is itself a juristic person;

“lease” means an agreement in the ordinary course of business, in terms of which temporary possession of any property is delivered to or at the direction of the consumer, or the right to use any such property is granted to or at the direction of the consumer;

“licence” means the authority, regardless of its specific title or form, issued to a person and in terms of which that person is authorised to conduct business;

“loyalty credit or award” means any

- (a) good, service or other benefit;

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- (b) right to a good, service or other benefit; or
- (c) point, credit, token, device or other thing which, when accumulated in sufficient quantities, entitles the holder to seek, request, or assert a claim for a good, service or other benefit

in terms of a loyalty program, irrespective of the name, nature, form or characterization assigned by that loyalty program to any such good, service or other benefit, right or thing;

“loyalty program” means any arrangement or scheme in the ordinary course of business, in terms of which a supplier of goods or services, association of such suppliers, or other person on behalf of or in association with such suppliers, offers or grants to a consumer any loyalty credit or award in connection with a transaction or an agreement;

“mark”, when used as a noun, means any device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or other sign capable of being represented graphically, or any combination of those things, but does not include a trade mark;

“market” when used as a verb, means to promote, sell or supply any goods or services in the ordinary course of business;

“member of the Board” means a person appointed to the Board in terms of section 95;

“membership based group” means a club, trade union, association, society, or other collectivity, whether corporate or unincorporate, of persons voluntarily associated and organised for a common purpose or purposes;

“Minister” means the member of the Cabinet responsible for consumer protection matters;

“offer to supply”, when used in relation to -

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-
- (a) goods, includes the exhibition or exposure of those goods for the purpose of sale, supply, exchange, lease, hire or hire-purchase; or
 - (b) services, includes any notice, communication or representation that could reasonably be inferred as expressing a willingness to perform an activity for the benefit or at the direction of a consumer, or to grant a consumer access to an event, place or activity;

“official language” means a language mentioned in section 6(1) of the Constitution;

“ombud with jurisdiction”, in respect of any particular dispute arising out of an agreement or transaction between a consumer and a supplier who is, in terms of any public regulation, subject to the jurisdiction of an ‘ombud’, or a ‘statutory ombud’, means that ombud, or statutory ombud;

“organ of state” has the meaning set out in section 239 of the Constitution;

“person” includes a juristic person;

“premises” includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“prescribed” means determined, stipulated, required, authorized, permitted or otherwise regulated by a regulation made in terms of this Act;

“price”, when used in relation to –

- (a) a representation contemplated in section 27, includes any mark, device or representation that may reasonably be inferred to indicate or express a relationship between any good or service and the price at which the supplier is willing to sell or supply it; or
- (b) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation;

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“private supplier” means a supplier of goods or services in the ordinary course of business, other than a public supplier;

“prize” includes a reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, or other discounted or free thing;

“producer” with respect to any particular good, means a person who, in the ordinary course of business, -

- (a) grows, nurtures, harvests, mines, generates, refines, creates or manufactures that good, or causes any of those things to be done;
- (b) imports the good for the purpose of promoting or supplying it to consumers; or
- (c) by applying a personal or business name, trade mark, trade description or similar device on or in relation to that good, has created or established a reasonable expectation that the person is a person contemplated in paragraph (a) or (b).

“prohibited conduct” means an act or omission in contravention of this Act, other than an offence in terms of this Act;

“promote” includes -

- (a) advertising, displaying, offering to supply or sell any goods or service in the ordinary course of business; and
- (b) any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to participate in any activity;

“promotional competition” means any competition, game, scheme, arrangement, system, plan, or device for distributing prizes by lot or chance if –

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(a) it is conducted in the ordinary course of business for the purpose of promoting a producer, distributor, supplier, or association of any such persons, or the sale of any goods or services; and

(b) any prize offered exceeds the threshold prescribed in terms of section 42 (11);

“provincial consumer protection authority” means a body within the provincial sphere of government, designated by the responsible Member of the Executive Council of a province to have general authority to deal with consumer protection matters within that province;

“public regulation” means any national, provincial or local government legislation or subordinate legislation, or any license, tariff, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

“public supplier” means a supplier in the ordinary course of business -

(a) of any goods or services that are offered or supplied in terms of a public regulation; or

(b) that is an organ of state, is owned or directed by an organ of state, is contracted by an organ of state to offer or supply any goods or services, or is a public-private partnership;

“Registrar” means the registrar of Companies appointed in terms of the Companies Act, 1973 (Act No. 61 of 1973);

“regulation” means a regulation made under this Act;

“regulatory authority” means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry;

“repealed law” means an Act mentioned in section 149(3), or a public regulation made in terms of such an Act;

“respondent” means a person or firm against whom a complaint or application has been initiated in terms of this Act;

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“service” means -

- (a) an activity of any kind promoted, offered, made available or supplied in the ordinary course of business for the benefit of a consumer; or
- (b) access, or a right of access promoted, offered or made available in the ordinary course of business to -
 - (i) an event or activity;
 - (ii) any premises in which an event is to occur or an activity may be engaged in; or
 - (iii) any equipment in or on which an activity may occur

irrespective whether the person promoting, offering or providing that access participates in, supervises, or engages directly or indirectly in the event or activity;

“service provider” means a person who promotes, supplies or offers to supply a service in the ordinary course of business;

“sms” means a short message service provided through a telecommunication system;

“small business” has the meaning set out in the National Small Business Act, 1996 (Act No. 102 of 1996);

“solicit” means to approach a person at home or at the person’s place of business, in person or by electronic communication, for the direct or indirect purpose of -

- (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or
- (b) requesting the person to make a donation of any kind for any reason.

“solicit in person” means to solicit other than by electronic communication;

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“special-order goods” means goods that a supplier expressly or impliedly was required or expected to procure, create or alter specifically to satisfy the consumer’s requirements;

“supplier” means a person who in the ordinary course of business promotes, makes available, offers to supply, agrees to supply, or supplies any goods or services;

“supply”, when used as a verb -

- (a) in relation to goods, includes sell, lease, exchange, hire, or hire-purchase; or
- (b) in relation to services, means to perform an activity or to grant access to an event or a place or an activity;

“trade description” means

- (a) any description, statement or other direct or indirect indication, other than a trade mark, as to -
 - (i) the number, quantity, measure, weight or gauge of any goods;
 - (ii) the name of the manufacturer or producer of any goods;
 - (iii) the ingredients of which any goods consist, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or
 - (vi) any goods being the subject of any patent, privilege or copyright; or
- (b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a).

“trade mark” means -

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- (c) a trade mark as defined in section 2(1) of the Trade Marks Act, 1993 (Act No. 194 of 1993); or
- (d) a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993.

“transaction” means any interaction, or agreement to interact, in the ordinary course of business, between a supplier and a consumer concerning the supply or potential supply of any goods or services in an exchange for consideration, including any such supply or potential supply of goods or services in an exchange for consideration in terms of any public regulation;

“Tribunal” means the National Consumer Tribunal established by section 26 of the National Credit Act 2005 (Act No. 34 of 2005);

“this Act” includes the regulations;

“trust” means a legal relationship between a person who holds trust property, and the person or persons for whose benefit that trust property is held;

“trustee” means a person who assumes or is assigned control of another person’s property by operation of law, under legal process or under the terms of a security agreement;

“trust property” means anything of value held by one person in trust for another person; and

“used goods” means any goods that have been previously supplied to a consumer and not returned to the supplier in terms of a right of rescission or cancellation; and

“utility” means the supply to consumers generally of an essential –

- (a) good, such as electricity, water or gas; or
- (b) service, such as waste removal, or access to sewage lines, telecommunication networks, or any transportation infrastructure.

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2. Interpretation

- (1) This Act must be interpreted in a manner that -
 - (a) gives effect to the purposes set out in section 3; and
 - (b) promotes the achievement of the objectives of section 4.
- (2) A person, court or Tribunal interpreting or applying this Act may consider appropriate -
 - (a) foreign and international law; and
 - (b) international conventions, declarations or protocols relating to consumer protection.
- (3) If a provision of this Act requires a document to be signed or initialled by a party to a transaction, that signing or initialling may be effected by use of -
 - (a) an advanced electronic signature, as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); or
 - (b) an electronic signature, as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) provided that the supplier must take reasonable measures to prevent the use of the consumer's electronic signature for any purpose other than the signing or initialling of the particular document that the consumer intended to sign or initial.
- (4) Despite the periods of time set out in section 6 (1), each successive threshold determined by the Minister in terms of that section continues in effect until a subsequent threshold in terms of that section takes effect.
- (5) When a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by -
 - (b) excluding the day on which the first such event occurs;
 - (c) including the day on or by which the second event is to occur; and

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- (d) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively.

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PART B – PURPOSE, POLICY AND APPLICATION OF THE ACT

3. Purpose and policy of Act

- (1) The purpose of this Act is to promote and advance the social and economic welfare of consumers in South Africa by -
- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible;
 - (b) promoting fair business practices;
 - (c) protecting consumers from –
 - (i) unfair, unreasonable or otherwise improper trade practices; and
 - (ii) deceptive, misleading, unfair or fraudulent conduct;
 - (d) promoting social, economic and environmental responsibility in consumer markets;
 - (e) improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour;
 - (f) promoting consumer confidence and empowerment, and the development of a culture of consumer responsibility through individual and group education, vigilance, advocacy and activism;
 - (g) providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and
 - (h) providing for an accessible, consistent, harmonized, effective and efficient system of redress for consumers.
- (2) The purposes, policies and provisions of this Act -
- (a) apply equally to all consumers in South Africa in respect of a transaction to which this Act is applicable in terms of section 5; and

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- (b) as contemplated in section 9(3) of the Constitution, are intended in particular to protect and advance the interests of, and better assure the realization and enjoyment of consumer rights, by -
- (i) historically disadvantaged persons;
 - (ii) low income persons and communities;
 - (iii) remote, isolated or low density populations and communities;
 - (iv) minors, seniors and other similarly vulnerable consumers; and
 - (v) consumers whose ability to read and comprehend advertisements, agreements, marks, instructions, labels, warnings or notices is limited by reason of low literacy, vision impairment, or limited fluency in the language in which any such text is produced, published or presented.

4. Promotion of consumer policy and realization of consumer rights

- (1) The National Consumer Commission, in addition to its responsibilities set out elsewhere in this Act, is responsible to take reasonable and practical measures, in a manner consistent with the principles and purposes of this Act, to -
- (a) promote and support the development, where the need exists, of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market and industry generally, and in particular to meet the needs of persons contemplated in section 3 (2)(b);
 - (b) monitor and report each year to the Minister on the following matters:
 - (i) the availability of goods and services to persons contemplated in section 3 (2)(b), including price and market conditions, conduct and trends and the performance of public and private suppliers in ensuring the realization and full enjoyment of their consumer rights by persons contemplated in section 3(2)(b);

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- (ii) access to the consumer market by small businesses or persons contemplated in section 3 (2)(b); and
 - (iii) any other matter relating to the consumer market; and
 - (c) conduct research and propose policies to the Minister in relation to any matter affecting the consumer market, including but not limited to proposals for legislative, regulatory or policy initiatives that would improve the realization and full enjoyment of their consumer rights by persons contemplated in section 3(2)(b).
- (2) Any of the following persons may, in the manner provided in this Act, approach a court, the Tribunal, or the National Consumer Commission alleging that a consumer's rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring:
- (a) A person acting on their own behalf;
 - (b) A duly authorised person acting on behalf of another person who cannot act in their own name;
 - (c) A person acting as a member of, or in the interest of, a group or class of persons;
 - (d) A person acting in the public interest; and
 - (e) An association acting in the interest of its members.
- (3) In any matter brought before the National Consumer Tribunal or a court in terms of this Act, the Tribunal or Court, as the case may be -
- (a) must promote the spirit, purpose and objects of this Act;
 - (b) must develop the common law as necessary to improve the realization and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3 (2)(b);

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- (c) if any provision of this Act, read in its context, can be reasonably construed to have more than one meaning, must prefer the meaning that best promotes the spirit and purpose of this Act, and will best improve the realization and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3 (2)(b);
- (d) must strictly interpret any document prepared or published by or on behalf of a supplier or required to be produced by a supplier, to the benefit of the consumer –
- (i) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer; and
 - (ii) so that any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to the content of the document, the manner and form in which it was prepared and presented, and the circumstances of the transaction or agreement;
- (e) must make appropriate orders to give practical effect to the consumers' right of access to redress, including, but not limited to -
- (i) any order expressly provided for in this Act; and
 - (ii) any innovative order that better advances, protects, promotes and assures the realization by consumers of their rights in terms of this Act.
- (4) In any dealings with a consumer or potential consumer in the ordinary course of business, a person must not –
- (a) engage in any conduct contrary to, or calculated to frustrate or defeat the purpose and policy of this Act;
 - (b) engage in any conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive; or

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- (c) make any representation about a supplier or any goods or services, or a related matter, unless the person has reasonable grounds for believing that the representation is true.

5. Application of Act

- (1) Subject to subsections (2) to (4) this Act applies to every –
 - (a) transaction occurring within, or having an effect within, the Republic between parties dealing at arm's length, as described in subsection (3), except –
 - (i) a transaction concerning services to be supplied under an employment contract; or
 - (ii) a credit agreement, as defined in the National Credit Act, 2005 (Act No. 34 of 2005), irrespective whether that Act applies to that credit agreement;
 - (b) offer or agreement to enter into a transaction contemplated in paragraph (a);
 - (c) advertisement with respect to goods or services if those goods or services reasonably could be the subject of a transaction contemplated in paragraph (a) or an agreement contemplated in paragraph (b); and
 - (d) the production, distribution, promotion, sale, or supply of goods, or similar incidental activities relating to a transaction contemplated in paragraph (a) or an agreement contemplated in paragraph (b).
- (2) Despite subsection (1), if the consumer in respect of any transaction, agreement or a category or series of potential transactions or agreement is –
 - (a) the state, or an organ of state; or
 - (b) a juristic person, other than a juristic person which is a franchisee or potential franchisee of the supplier in respect of that transaction, if -

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- (i) the asset value or annual turnover of that juristic person, combined with the asset value or turnover of any related person, at the time of the transaction equalled or exceeded the threshold value determined by the Minister in terms of section 6(1)(a); or
 - (ii) the value of the particular transaction equalled or exceeded the threshold value determined by the Minister in terms of section 6(1)(b).

only Part A of Chapter 2, and section 70, together with any provisions relating to the interpretation, application or enforcement of those provisions, apply to that agreement or transaction.

- (3) Despite subsection (1), Section 28 and 29 do not apply in respect of the marketing of used goods.
- (4) For greater certainty in applying subsections (1) and (2) –
 - (a) the asset value or annual turnover of a juristic person at the time of a transaction, or the time an agreement is made, is the value stated as such by that juristic person at that time;
 - (b) 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; and
 - (c) in any of the following arrangements, the parties are not dealing at arm's length:
 - (i) a transaction between a juristic person, as consumer, and a person who has a controlling interest in that juristic person, as supplier;
 - (ii) a transaction between a juristic person, as supplier, and a person who has a controlling interest in that juristic person, as consumer;

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- (iii) a transaction between natural persons who are in a familial relationship and -
 - (aa) are co-dependent on each other; or
 - (bb) one is dependent upon the other; and
 - (iv) any other arrangement -
 - (aa) in which the parties are not independent of one another and consequently either of them does not necessarily strive to obtain the utmost possible advantage out of the transaction; or
 - (bb) that is of a type that has been held in law to be between parties who are not dealing at arm's length.
 - (5) The application of this Act in terms of subsections (1) and (2) extends to a matter irrespective whether the supplier -
 - (a) resides or has its principal office within or outside the Republic;
 - (b) operates on a for-profit basis or otherwise; or
 - (c) is an entity contemplated in the definition of "public supplier" as set out in section 1.
 - (6) The application of this Act to any transaction applies equally to all goods and services involved in that transaction, irrespective whether any of those goods or services are offered or supplied in conjunction with other goods or services, or separate from any other goods or services.
 - (7) The supply of any goods or services by a membership based group to any of its members is a transaction for all purposes of this Act irrespective whether the members are charged a price for any particular supply of those goods or services, unless -
 - (a) there is no charge or economic contribution demanded or expected in order to become or remain a member of the membership based group;

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- (b) the goods or services are provided directly by the members to one another for their mutual benefit; or
 - (c) the membership based group, or the supply of goods or services, are of a prescribed category that is exempted from the application of the Act.
- (8) For all purposes of this Act –
- (a) a solicitation of offers to enter into a franchise agreement;
 - (b) an offer by a potential franchisor to enter into such an agreement with a potential franchisee;
 - (c) a franchise agreement or agreement supplementary to a franchise agreement; and
 - (d) any supply of goods or services in terms of such an agreement by the franchisor as supplier, to the franchisee, as consumer,
- is a transaction at arm's length within the meaning of this Act.
- (9) If this Act applies to a transaction -
- (a) it continues to apply to that transaction even if a party to it ceases to reside or have its principal office within the Republic; and
 - (b) it applies in relation to every transaction, act or omission under that transaction, whether or not that transaction, act or omission occurs within or outside the Republic.

6. Threshold determination

- (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the Gazette, must determine -
- (a) a monetary asset value or annual turnover threshold, of not more than R 1 000 000, for the purpose of section 5(2)(b)(i); and

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- (b) a monetary threshold applicable to the value of transactions, for the purposes section 5(2)(b)(ii).

- (2) The initial thresholds determined by the Minister in terms of this section take effect on the effective date, and each subsequent threshold takes effect six months after the date on which it is published in the Gazette.

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Chapter 2**Fundamental Consumer Rights****PART A – RIGHT TO EQUAL ACCESS TO THE CONSUMER MARKET****7. Protection against discriminatory market targeting**

A supplier of goods or services must not, in an unfairly discriminatory manner, or with an unfair discriminatory purpose or effect, offer or supply goods or services, or enter into an agreement to supply goods or services, by targeting particular communities, districts, populations or market segments, for -

- (a) unreasonably exclusive access to, exclusion from, or differential priority of access to, goods or services;
- (b) the supply of unreasonably different qualities of goods or services; or
- (c) unreasonable differential pricing of goods or services.

8. Protection against discrimination in consumer transactions

(1) A supplier must not direct or indirectly treat any person differently than any other, in a manner that constitutes unfair discrimination on one or more grounds set out in section 9 (3) of the Constitution, or one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), when –

- (a) assessing the ability of the person to pay the cost, or otherwise meet the obligations, of a proposed transaction or agreement;
- (b) deciding whether to refuse a request to enter into a transaction or agreement, or to offer or enter into a transaction or agreement;

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- (c) determining any aspect of the cost of a transaction or agreement to the consumer;
 - (d) interacting with the consumer or prospective consumer -
 - (i) in the supplier's place of business, or
 - (ii) in the course of displaying or demonstrating any goods, testing or fitting any goods, or negotiating the terms of a transaction or agreement; or
 - (e) selecting, preparing, packaging or delivering any goods to the consumer, or providing any services to the consumer;
 - (f) proposing or agreeing the terms and conditions of a transaction or agreement;
 - (g) assessing or requiring compliance by the person with the terms of a transaction or agreement;
 - (h) exercising any right of the supplier under a transaction or agreement, this Act or applicable provincial consumer legislation;
 - (i) determining whether to continue, enforce, seek judgment in respect of, or terminate a transaction or agreement; or
 - (j) determining whether to report, or reporting, any consumer information or record.
- (2) Despite subsection (1)(b), a supplier has the right to decline a request to supply, or to refuse to supply, particular goods or services to a prospective consumer if -
- (a) the supplier is a private supplier, and is -
 - (i) a natural person, partnership or close corporation; or
 - (ii) a juristic person or association formed for purposes that are predominantly concerned with matters of conscience, religion, thought, belief or opinion;

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- (b) having regard to the nature of the goods or services, and the use to which the prospective consumer intends to apply those goods or services, it would unreasonably infringe the supplier's right to exercise freedom of conscience, religion, thought, belief or opinion, in terms of section 15(1) of the Constitution, to be required to supply those goods or services to that prospective consumer; and
 - (c) the prospective consumer has reasonable access to an alternative supplier of similar or comparable goods or services.
- (3) Subsections (1) and (2) apply in respect of a consumer or prospective consumer that is an association or juristic person, to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person.

9. Fair or reasonable grounds for differential treatment of consumers

- (1) It is not unfair discrimination on the basis of age to -
- (a) refuse to supply or provide access to any particular goods or services to a minor, or to require the consent of a parent, guardian or other responsible adult before supplying or providing access to any particular goods or services to an unemancipated minor -
 - (i) in accordance with any public regulation; or
 - (ii) as a reasonable precaution to protect the health, welfare or safety of a minor;
 - (b) refuse on reasonable grounds to -
 - (i) enter into an agreement with an unemancipated minor for the supply of any goods or services; or
 - (ii) continue or renew an agreement contemplated in sub-paragraph (i);

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- (c) reasonably designate any facility or service for the exclusive use of -
- (i) minors generally;
 - (ii) minors who are above or below a specified age, or between specified ages; or
 - (iii) adults who have attained a specified age of at least 55 years; or
- (d) advertise, offer or agree to supply, or supply, any goods or services at a discounted price solely on the basis that the consumer or prospective consumer -
- (i) is a minor who has not yet attained a specified age; or
 - (ii) is an adult who has attained a specified age of at least 55 years.
- (2) It is not unfair discrimination on the basis of gender or sex to reasonably -
- (a) provide and designate separate but substantially equivalent facilities for the exclusive use of each gender; or
 - (b) offer to supply or provide access to a facility exclusively to either gender.

10. Management of pricing and risk must not be discriminatory

In managing, underwriting or pricing any risk-based goods or services, or in pricing any other goods or services within a particular market, a supplier must not use any scoring or other evaluative mechanism or model that is unreasonably founded or structured upon a statistical or other analysis in which the primary or predominant basis of categorization, differentiation or assessment is a ground of unfair discrimination prohibited in section 9 (3) of the Constitution.

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11. Equality Court jurisdiction over this Part

- (1) In respect of an alleged contravention of this Part, a consumer protection group or any person contemplated in section 20(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), may -
- (a) institute proceedings before an equality court in terms of Chapter 4 of that Act; or
 - (b) file a complaint with the Commission, which must refer the complaint to the Equality Court, if the complaint appears to be valid.
- (2) In any proceedings contemplated in this Part -
- (a) there is a presumption that any differential treatment contemplated in section 8 (1) is unfair discrimination unless it is established that the discrimination is fair; and
 - (b) a court may draw an inference that a supplier has discriminated unfairly if -
 - (i) the supplier has made a decision contemplated in section 8 (1)(a) through (j), with respect to that consumer or prospective consumer in a manner that constituted differential treatment compared to that accorded to another consumer;
 - (ii) in the circumstances, the differential treatment appears to be based on a prohibited ground of discrimination contemplated in section 8 (1); and
 - (iii) the supplier has refused or failed to offer a alternative reasonable and justifiable explanation for the difference in treatment.

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PART B – RIGHT TO CONFIDENTIALITY AND PRIVACY**12. Right to confidential treatment**

- (1) Any person who, in terms of this Act, receives, compiles, retains or reports any confidential information pertaining to a consumer or prospective consumer must protect the confidentiality of that information, and in particular, must-
 - (a) use that information only for a purpose permitted or required in terms of this Act, other national legislation, or applicable provincial consumer legislation; and
 - (b) report or release that information only to the consumer or prospective consumer, or to another person -
 - (i) to the extent required by or in terms of this Act, other national legislation, or applicable provincial consumer legislation; or
 - (ii) as permitted or directed by –
 - (aa) the written consent or instructions of the consumer or prospective consumer; or
 - (bb) an order of a court or the Tribunal.
- (2) A person referred to in subsection (1) must report or release confidential information contemplated in subsection (1) in accordance with any written direction from the consumer or prospective consumer.
- (3) It is an offence for any person to refuse to comply with a compliance notice issued in terms of this Act, and in respect of this section.

13. Use of consumer information for marketing or related purposes

- (1) A supplier must not use, direct or permit any other person to use, or supply to another person to use, any confidential information pertaining to a consumer or prospective

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consumer for, or in relation to, any promotional purpose, or direct mass distribution of messages, whether printed or by electronic communication, unless the consumer has consented to such a use in the manner contemplated in subsection (2).

- (2) When entering into any transaction or agreement for the supply of any goods or services, the supplier may present to the consumer a written statement in the prescribed form -
- (a) setting out the consumer's rights in terms of this section; and
 - (b) inviting the consumer to permit the supplier to use the consumer's information contemplated in subsection (1) in any
 - (i) direct promotional activity that may be conducted by or on behalf of the supplier;
 - (ii) direct mass distribution of messages by print, or electronic communication; or
 - (iii) marketing or customer list that may be sold or distributed by the supplier to another person.
- (3) A supplier who requests and receives any consents from consumers in terms of subsection (2) must maintain a register in the prescribed manner and form of all such consents granted by consumers.
- (4) A person must not initiate, sponsor, promote or knowingly participate in any activity, scheme or communication that is primarily designed for the purpose of accumulating confidential information or other identifying information concerning consumers, either surreptitiously or without their express consent.

14. Right to restrict unwanted telecommunication access to consumer

- (1) The right of every person to privacy includes the right to refuse to accept, or pre-emptively block, any electronic communication to that person if the electronic

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communication is primarily for the purpose of fundraising or marketing any goods or services.

- (2) To facilitate the realization of each consumer's right to privacy, and to enable consumers to efficiently protect themselves against the unwanted and intrusive activities contemplated in subsection (1), the National Consumer Commission may establish a registry in which any person may register a pre-emptive block, either generally or for specific purposes, against any electronic communication that is primarily for the purpose of fundraising or marketing any goods or services.
- (3) A person authorizing, directing or conducting any activity contemplated in this section must not direct or permit any person associated with that activity to direct or deliver any electronic communication to, or otherwise contact, a person who has registered a relevant pre-emptive block in terms of subsection (2).

15. Regulation of time for contacting consumers

- (1) A supplier must not initiate any direct personal contact with a consumer for any promotional purpose during a prohibited period prescribed in terms of this section, except to the extent that the consumer has expressly or implicitly requested or agreed otherwise.
- (2) In order to protect the privacy of consumers, the Minister may prescribe specific days, dates, public holidays, or times of days during which it is prohibited for a supplier to initiate direct personal contact with a consumer or prospective consumer for any promotional purpose.

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PART C – CONSUMER’S RIGHT TO CHOOSE**16. Consumer’s right to select suppliers and products**

- (1) A supplier must not require, as a condition of offering to supply, or supplying, any goods or services, or as a condition of entering into an agreement or transaction, that the consumer -
- (a) purchase any other goods or services from that supplier;
 - (b) enter into an additional agreement or transaction with the same or another supplier; or
 - (c) agree to purchase any goods or services from a designated third party,
- unless the supplier can show financial or other efficiency benefits to the consumer.
- (2) Without limiting the generality of subsection (1), a supplier requires a consumer to purchase additional goods or services if the supplier –
- (a) supplies the primary goods and any additional goods in a common package, and offers them for supply at a single price;
 - (b) attaches to or inserts within, or in the packaging of, any primary goods a promotional coupon, credit slip, voucher or similar device to be used as full consideration for the purchase of any additional goods or services; or
 - (c) installs within or encodes upon the primary goods, or any component of them, any additional goods

but does not alternatively offer them for supply separately and at individual prices.

17. Consumer’s right to authorize services

- (1) This section applies to any transaction or agreement in terms of which a service provider supplies a repair or maintenance service to, or supplies or installs any

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replacement parts or components in, any property belonging to or in the control of the consumer, if –

- (a) the service provider has or takes possession of that property for the purpose contemplated in this subsection; or
 - (b) in any other case, the consumer requests an estimate before any service goods are supplied.
- (2) A service provider to whom this section applies must not charge a consumer for the supply of any goods or services contemplated in subsection (1) unless -
- (a) the supplier or service provider has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorized the work; or
 - (b) the consumer, in writing, has -
 - (i) declined the offer of an estimate, and authorised the work; or
 - (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.
- (3) A service provider must not charge a consumer for -
- (a) an estimate required in terms of subsection (1)(a), unless the service provider has disclosed the price for preparing that estimate, and the consumer has approved it; or
 - (b) any diagnostic work, disassembly or re-assembly required in order to prepare an estimate, or for any damage to or loss of material or parts in the course of preparing an estimate, in addition to any estimate charge imposed in terms of paragraph (a).
- (4) The Minister, by regulation, may exempt from this section any transactions or services referred to in subsection (1) that are below a prescribe threshold.

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18. Consumer's right to choose or examine goods

- (1) If any goods are displayed in, or sold from, open stock, the consumer has the right to select or reject any particular item from that stock.
- (2) If the consumer has agreed to purchase goods on the basis of a description or sample of the goods it is an implied condition of the agreement that -
 - (a) the goods delivered to the consumer must correspond with the description or sample; and
 - (b) the goods must be free from any defect that would not be apparent from the description or on reasonable examination of the sample.
- (3) If the sale or lease is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.
- (4) When the supplier tenders delivery of any goods to a consumer, the supplier must, on request, allow the consumer a reasonable opportunity to examine the goods for the purpose of ascertaining whether they are in conformity with the transaction.
- (5) If goods are delivered to the consumer that the consumer has not previously examined, the consumer is deemed not to have accepted them until the consumer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the transaction.

19. Consumer's rights with respect to delivery of goods or supply of service

- (1) Unless otherwise expressly provided or anticipated in an agreement, it is an implied condition of every transaction for the supply of goods that -
 - (a) the supplier is responsible to deliver the goods to the consumer -
 - (i) within a reasonable time;
 - (ii) at the agreed place of delivery; and

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- (iii) at the cost and risk of the supplier;
 - (b) the agreed place of delivery is the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and
 - (c) the goods remain at the supplier's risk until the consumer has accepted delivery.
- (2) The consumer has the right to require -
- (a) delivery of any goods at the date, time and place of the consumer's choice, but the supplier may require the consumer to pay the costs of delivery at any location other than as contemplated in subsection (1); or
 - (b) performance of any service at the time agreed with the supplier.
- (3) If an agreement does not provide a specific time for delivery of any goods or supply of any service, the supplier must not require that the consumer accept delivery or performance of the services at an unreasonable time.

20. Consumer's acceptance of goods or services

- (1) The consumer is deemed to have accepted any goods when -
- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted them;
 - (b) the goods have been delivered to the consumer, and the consumer does any act in relation to them that is inconsistent with the supplier's ownership of the goods; or
 - (c) after the lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected them.
- (2) If the supplier delivers to the consumer a larger quantity of goods than the consumer agreed to buy, the consumer may accept the goods, and

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- (a) pay for the agreed quantity at the agreed rate; and
 - (b) treat the excess quantity as unsolicited goods in accordance with section 21.
- (3) If the supplier delivers to the consumer some of the goods the supplier agreed to sell mixed with goods of a different description not contemplated in the agreement, the consumer may
- (a) accept the goods that are in accordance with the agreement and reject the rest,
or
 - (b) reject the whole.

21. Unsolicited goods or services

- (1) A consumer is not required to pay a supplier for any goods or services supplied to the consumer unless the consumer -
- (a) has implicitly requested the supplier to supply those particular goods or services by tendering payment for them, or by other conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply those particular goods or services;
 - (b) has expressly requested the supplier to supply those particular goods or services before they are supplied to the consumer; or
 - (c) is a party to an agreement with the supplier in terms of which the supplier has undertaken to supply goods or services of that particular class from time to time to the consumer without further approval or specific request.
- (2) If a consumer is a party to an agreement contemplated in subsection (1)(c) and, during the course of that agreement, the supplier introduces goods or services that are materially different from and in substitution for the goods or services previously supplied, the new goods or services must be regarded as being unsolicited from the time of the material change, unless the consumer has expressly consented to the material change.

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- (3) If a consumer receives any unsolicited goods from a supplier, the consumer –
- (a) may
 - (i) retain the goods without payment, subject to paragraph (b)(ii); or
 - (ii) return the goods to the supplier at the supplier's risk and expense; and
 - (b) is not liable for any -
 - (i) loss or damage to those goods while they are in transit, or at any time after they are received by the consumer, whether or not they remain in the consumer's possession; or
 - (ii) use or depletion of, or damage to those goods at any time more than 10 business days after the consumer receives the goods, unless during that time, the supplier has -
 - (aa) notified the consumer that the goods were delivered to the consumer in error, and
 - (bb) has arranged to recover them, at the suppliers risk and expense.
- (4) If a consumer retains any unsolicited goods, and the supplier does not give notice, or recover the goods, as contemplated in subsection (3)(b)(ii), the property in those goods passes unconditionally to the consumer.
- (5) A person must not demand or assert any right to, or attempt to collect, any payment from a consumer in respect of any charge relating to unsolicited goods delivered, or unsolicited services supplied to or for the benefit of, that consumer.
- (6) If a consumer has made any payment to a supplier in respect of any charge relating to unsolicited goods or services the consumer is entitled to recover that amount, with interest from the date on which it was paid to the supplier, in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

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22. Right of consumer's estate to choose whether to uphold agreement

- (1) If a consumer dies after entering into an agreement for the supply of any goods or services, but before the delivery of those goods or the supply of those services, the administrator of the consumer's estate may give notice to the supplier –
 - (a) requiring delivery of the goods or supply of the services, in accordance with the agreement; or
 - (b) terminating the agreement as from the death of the consumer, subject to subsections (2) to (4).
- (2) Upon the death of a consumer as contemplated in subsection (1), any deposit paid by the consumer, and held by the supplier in trust in terms of section 74, remains in trust for the benefit of the consumer's estate, and remains subject to the provisions of section 74.
- (3) If an agreement that has been terminated in terms of subsection (1)(b) contemplated the supply of any special-order goods, after receiving notice of the termination, the supplier -
 - (a) must not order, procure or make anything not ordered, procured or made, and must see to the diligent completion of anything that had been ordered, procured or begun to be made;
 - (b) is entitled to reimbursement for any costs for such procurement or work, on the terms contemplated in the agreement; and
 - (c) upon acquisition or completion of those special-order goods, holds them in trust for the benefit of the consumer's estate, subject to further direction by the administrator of that estate.
- (4) This section does not apply in respect of any agreement between the consumer and a supplier of funeral or burial services.

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23. Consumer's right to cancel reservation

- (1) A consumer has the right to cancel any advance booking or reservation for a service to be supplied, subject to subsections (2) and (3).
- (2) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date -
 - (a) may require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the goods or services that have been reserved; and
 - (b) may impose a reasonable charge for cancellation of the order or reservation.
- (3) For the purposes of this section, a cancellation charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to -
 - (a) the nature of the service that was reserved or booked;
 - (b) the length of notice of cancellation provided by the consumer; and
 - (c) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the notice, and the time of the cancelled reservation.
- (4) If a consumer is unable to carry out a reservation or advance booking because the consumer has died, the supplier -
 - (a) may not impose any cancellation fee in respect of the reservation or booking; and
 - (b) must refund to the administrator of the consumer's estate any deposit paid by the consumer in respect of the reservation or booking.
- (5) Section 22(3), read with the changes required by the context, applies in respect of a cancellation in terms of this section.

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24. Consumer's right to rescind or cancel transaction or agreement

- (1) The provisions of this section are in addition to and not in substitution for any right to return goods and receive a refund that may otherwise exist in law between a supplier and consumer.
- (2) A consumer may rescind a transaction or an agreement or renewal of an agreement –
 - (a) within 10 business days after delivery of goods to be supplied in terms of the agreement, if -
 - (i) the agreement or transaction arises as a result of -
 - (aa) direct, distance or electronic marketing by the supplier as contemplated in sections 38 or 39, and contemplates the delivery of goods to the consumer; or -
 - (ii) any other marketing in circumstances in which the consumer is unable to choose or examine goods as contemplated in section 18;
 - (b) within 5 business days after entering into the agreement or transaction if the agreement -
 - (i) arises as a result of direct, distance or electronic marketing by the supplier as contemplated in sections 38 or 39, but does not contemplate the delivery of goods to the consumer; or
 - (ii) concerns the purchase of a time-share interest.
- (3) At any time, by giving one month notice to the supplier or fund-raiser concerned, a consumer may cancel without penalty an agreement -
 - (a) for the supply of a continuous service, other than an agreement contemplated in section 46;
 - (b) to purchase any goods or services on a periodic recurring basis by subscription; or

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- (c) to make a donation on a periodic recurring basis.
- (4) Despite the time limits set out in subsection (2), a consumer may rescind a transaction or agreement as contemplated in that subsection within 1 year after the transaction or agreement if the supplier -
- (a) was required to be licensed or registered in terms of any public regulation, and was not so licensed or registered; or
 - (b) contravened any provision of this Act in respect of the transaction.
- (5) The expense and risk of return is borne by -
- (a) the supplier if goods are unacceptable;
 - (b) otherwise by the consumer.
- (6) A supplier -
- (c) must return any payment received from a consumer within 5 business days after receiving notice of the rescission of a transaction in terms of this section or an agreement or renewal of an agreement; and
 - (d) must not attempt to collect any payment in terms of a rescinded donation or transaction or an agreement or renewal of an agreement.
- (7) This section does not apply with respect to -
- (e) an agreement contemplated in section 46, or
 - (f) an agreement or transaction in terms of which any goods have been delivered to the consumer, if -
 - (i) any public regulation prohibits the return of those goods to a supplier once they have been supplied to, or at the direction of, a consumer; or
 - (ii) after having been supplied to, or at the direction of, the consumer, the goods have been -

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- (aa) partially or entirely eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying them; or
- (bb) partially or entirely disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

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PART D – RIGHT TO DISCLOSURE AND INFORMATION**25. Identification of supplier**

- (1) A person must not carry on business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or agreement with a consumer under any name except –
 - (a) the person's name, as –
 - (i) recorded in an identity document or any other recognised identification document, in the case of an individual; or
 - (ii) registered in terms of a public regulation, in the case of a juristic person; or
 - (b) a name registered to, and for the use of, that person in terms of Chapter 5 or any other public regulation.
- (2) A person doing anything contemplated in subsection (1) must include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account that the person issues:
 - (a) the name, title or description under which the business is carried on;
 - (b) a statement of the place at which, or from which, the business is carried on; and
 - (c) if the activity is carried on under a name contemplated in subsection (1)(b), the name of the person to whom that name is registered.

26. Disclosure by intermediaries

- (1) An intermediary must -
 - (a) disclose all prescribed information to –

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- (i) any person whom the intermediary solicits or agrees to represent with respect to the sale of any property or services, or from whom the intermediary accepts any used property for the purpose of offering it for sale; and
 - (ii) any person from whom the intermediary solicits an offer, or to whom the intermediary offers to supply, or supplies, -
 - (aa) any service to be performed by a third person; or
 - (bb) any goods or property belonging to a third person; and
 - (b) must keep the prescribed records of all relationships and transactions contemplated in this section.
- (2) Subsection (1)(a)(i) does not apply to -
- (a) the executor or other administrator of a deceased's estate, or the liquidator of an insolvent estate, in respect of any property of that estate; or
 - (b) a trustee in respect of any trust property.
- (3) The Minister may prescribe -
- (a) the information, including the manner and form of delivery of any such information, that an intermediary, or different categories of intermediary, must provide in terms of this section; and
 - (b) any records, including the form and content of any such records, that an intermediary, or different categories of intermediary, must keep in terms of this section.
- (4) Regulations contemplated in subsection (3)(a) must include, at least the requirement that an intermediary disclose to each person with whom the intermediary enters into a transaction -
- (a) the basis on which the intermediary gains, profits or is compensated or rewarded for that transaction; and

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- (b) any relationship between the intermediary and any party to the transaction.

27. Disclosure of price of goods or services

- (1) A supplier must not display any goods for sale, or offer to supply any prescribed services without displaying a price in relation to those goods or services, unless, in the case of goods, the display is –
- (a) in an area within the supplier's premises to which the public does not ordinarily have access; and
 - (b) designed and intended predominantly as a form of advertisement of the supplier, or of goods or services.
- (2) For the purposes of this section, -
- (a) a price is displayed in relation to particular goods if it is –
 - (i) annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - (ii) published in relation to the goods in a catalogue available to the public if –
 - (aa) a time is specified in the catalogue as the time after which the goods may not be sold at that price, and that time has not yet passed; or
 - (bb) in any other case, the catalogue may reasonably be regarded as not out of date; or
 - (iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services; and

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- (b) a price is not displayed in relation to any goods if -
- (i) it is in relation to goods originating outside the Republic, and is expressed in a currency other than the currency of the Republic; or
 - (ii) the display of that price is fully covered and obscured by a second displayed price.
- (3) If a supplier displays any goods or offers to supply any services in relation to which more than one price is concurrently displayed, the supplier must not sell those goods or services at a price higher than the lower or lowest of the prices so displayed.
- (4) Subsection (4) does not apply in respect of the price of any goods or services if the price of those goods or services is determined by any public regulation.
- (5) If a supplier has provided an estimate for any service, or goods and services, as contemplated in section 17, the price for that service, or goods and service, must not exceed the estimate, unless
- (a) the service provider has informed the consumer of the additional estimated charges; and
 - (b) the consumer has authorized the work to continue.

28. Product labelling and trade descriptions

- (1) A supplier of goods must not display, offer to supply or supply any goods, other than goods that are exempt in terms of subsection (4), unless a trade description of those goods is
- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
 - (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or

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- (c) is contained in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) A trade description applied to goods must address all of the matters contemplated in-
- (a) subparagraphs (a)(i), (ii), and (iii) of the definition of trade description in section 1; and
- (b) section 29.
- (3) A supplier of goods must -
- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that
- (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
- (ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (5); and
- (b) with respect to any goods within that person's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).
- (4) The minister, by regulation, may -
- (a) prescribe categories of goods, in respect of which the trade description applied, must address the matters contemplated in subparagraphs (a)(iv), (v) and (vi) of the definition of trade description in section 1 and the manner in which these matters may be addressed;
- (b) exempt particular goods or categories of goods from the application of subsection (1) and (2) if -
- (i) those goods, or that category of goods, are subject to regulation in terms of any public regulation other than this Act, and the Minister is satisfied

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- that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section; or
- (ii) the information required in terms of this section is self-evident given the nature of the goods, and the manner and circumstances in which they are customarily made available for supply to the public; or
- (c) prescribe circumstances of displaying or selling particular goods or categories of goods, which if satisfied, would exempt those goods from the application of this section.
- (5) It is an offence for a person to -
- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;
- (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers; or with respect to any goods within that person's control; or
- (c) fail to take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b).

29. Disclosure of environmental facts affecting goods

- (1) In addition to the requirements of section 28, a person who packages any prescribed goods, or imports any such goods, for supply to consumers must display on or in association with that packaging or those goods, a notice in the prescribed manner and form that -
- (a) discloses the presence, nature and extent of any -
- (i) genetically modified ingredients or components of those goods; or

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- (ii) ingredients or components that have been determined to present a chemical or biological hazard to humans, relative to their concentration in those goods;
 - (b) discloses the estimated energy requirements per hour of use, if the operation of the goods requires the utilization of energy other than muscle power;
 - (c) discloses the nature and intensity of any potentially harmful energy radiation, if the goods, or any component of the goods, emit any such radiation; and
 - (d) discloses the need for special handling, or waste disposal, of the goods, any component of them or any material in which the goods were packaged, if such special handling or waste disposal is -
 - (i) required in terms of any public regulation; or
 - (ii) is advisable in the interests of personal or public health or safety.
- (2) A person who, in connection with the supply of any services to a consumer, -
- (a) supplies to that consumer any goods that prescribed in terms of subsection (1), must –
 - (i) inform the consumer of any relevant information contemplated in subsection (1) before supplying those goods; and
 - (ii) after complying with sub-paragraph (i), obtain the consumer's express consent to install any goods that are the subject of a notice required by subsection (1), before supplying those goods.
- (3) Subsection (1) does not apply to any goods or services in respect of which a substantially similar label or notice has been applied or provided in terms of any other public regulation.
- (4) Section 28 (3) and (5), each read with the changes required by the context, apply in respect of a label or notice required by this section.

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30. Disclosure of re-conditioned goods

A person who offers or agrees to supply, or supplies, any goods that –

- (a) have been re-conditioned, re-built or re-made; and
- (b) that bear the trade mark of the original manufacturer or supplier

must apply a conspicuous notice to those goods stating clearly that they have been re-conditioned, re-built or re-made.

31. Sales Records

- (1) A supplier of goods or services must provide a written record of each transaction to the consumer to whom the goods or services are supplied, including in that record at least the following information:
 - (a) The supplier's name, or registered business name, and VAT registration number, if any;
 - (b) The address of the premises at which or from which the goods or services were supplied;
 - (c) The date on which the transaction occurred;
 - (d) A name or description of any goods or services supplied or to be supplied;
 - (e) The unit price for each good or service supplied or to be supplied
 - (f) The quantity of each good or service supplied or to be supplied
 - (g) The total price of the transaction, before any applicable taxes;
 - (h) The amount of any applicable taxes; and
 - (i) The total price of the transaction, including any applicable taxes.