

## Prohibited charges

**100.** (1) A credit provider must not charge an amount to, or impose a monetary liability on, the consumer **in** respect of—

- (a) a credit fee or charge prohibited by this Act;
- (b) **an** amount of a fee or charge exceeding the amount that may be charged **40** consistent with this Act;

- (c) an interest charge under a credit agreement exceeding the amount that may be charged consistent with this Act; or
- (d) any fee, charge, commission, expense or other amount payable by the credit provider to any third party in respect of a credit agreement, except as contemplated in section 102 or elsewhere in this Act. 5
- (2) A credit provider must not charge a consumer a higher price for any goods or services than the price charged by that credit provider for the same or substantially similar goods or services in the ordinary course of business on the basis of a cash transaction.
- Cost of credit** 10
- 101.** (1) A credit agreement must not require payment by the consumer of any money or other consideration, except—
- (a) the principal debt, being the amount deferred in terms of the agreement, plus the value of any item contemplated in section 102;
- (b) an initiation fee, which— 15
- (i) may not exceed the prescribed amount relative to the principal debt; and
- (ii) must not be applied unless the application results in the establishment of a credit agreement with that consumer;
- (c) a service fee, which—
- (i) in the case of a credit facility, may be payable monthly, annually, on a per transaction basis or on a combination of periodic and transaction basis; or 20
- (ii) in any other case, may be payable monthly or annually; and
- (iii) must not exceed the prescribed amount relative to the principal debt;
- (d) interest, which—
- (i) must be expressed in percentage terms as an annual rate calculated in the prescribed manner; and 25
- (ii) must not exceed the applicable maximum prescribed rate determined in terms of section 105;
- (e) cost of any credit insurance provided in accordance with section 106;
- (f) default administration charges, which— 30
- (i) may not exceed the prescribed maximum for the category of credit agreement concerned; and
- (ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement, and only to the extent permitted by Part C of Chapter 6; and 35
- (g) collection costs, which may not exceed the prescribed maximum for the category of credit agreement concerned and may be imposed only to the extent permitted by Part C of Chapter 6.
- (2) A credit provider who is a party to a credit agreement with a consumer and enters into a new credit agreement with the same consumer that replaces the earlier agreement in whole or in part may charge that consumer an initiation fee contemplated in subsection (1)(b) in respect of that second credit agreement, only to the extent permitted by regulation, having regard to the nature of the transaction and the character of the relationship between the credit provider and consumer. 40
- (3) If a credit facility is attached to a financial services account, or is maintained in association with such an account, any service charge in terms of that account— 45
- (a) if that charge would not have been levied if there were no credit facility attached to the account, is subject to the prescribed maximum contemplated in subsection (1)(c); and
- (b) otherwise, is exempt from the prescribed maximum contemplated in subsection (1)(c). 50

## Fees or charges

- 102.** (1) If a credit agreement is an instalment agreement, a mortgage agreement, a secured loan or a lease, the credit provider may include in the principal debt deferred under the agreement any of the following items to the extent that they are applicable in respect of any goods that are the subject of the agreement — **5**
- (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;
  - (b) the cost of an extended warranty agreement;
  - (c) delivery, installation and initial fuelling charges;
  - (d) connection fees, levies or charges; **10**
  - (e) taxes, licence or registration fees; or
  - (f) subject to section 106, the premiums of any credit insurance payable in respect of that credit agreement.
- (2)** A credit provider must not— **15**
- (a) charge an amount in terms of subsection (1) unless the consumer chooses to have the credit provider act as the consumer's agent in arranging for the service concerned;
  - (b) require the consumer to appoint the credit provider as the consumer's agent for the purpose of arranging any service mentioned in subsection (1); or
  - (c) charge the consumer an amount under subsection (1) in excess of— **20**
    - (i) the actual amount payable by the credit provider for the service, as determined after taking into account any discount or other rebate or other applicable allowance received or receivable by the credit provider; or
    - (ii) the fair market value of a service contemplated in subsection (1), if the credit provider delivers that service directly without paying a charge to a third party. **25**
- (3) If the actual amount paid by a credit provider to another person is not ascertainable when the consumer pays an amount to the credit provider for a fee or charge contemplated in subsection (1) and if, when it is ascertained, it is less than the amount paid by the consumer, the credit provider must refund or credit the difference to the consumer. **30**

## Interest

- 103.** (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. **35**
- (2) A credit agreement may provide for an interest charge to become payable or be debited at any time after the day to which it applies.
- (3) A credit provider must not, at any time before the end of a day to which an interest charge applies, require payment of or debit the interest charge.
- (4)** A credit agreement may provide for the interest rate to vary during the term of the agreement only if the variation is by fixed relationship to a reference rate stipulated in the agreement, which reference rate must be the same as that used by that credit provider in respect of any similar credit agreements currently being issued by it. **40**
- (5)** Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs. **45**

(6) The Minister may make regulations prescribing the manner in which interest is to be calculated and disclosed for the purposes of this Act.

(7) Subject to the review and approval of the National Credit Regulator, subsection (4) does not apply in respect of developmental credit agreements.

## **Changes to interest, credit fees or charges**

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**104.** (1) A credit provider must not unilaterally increase—

- (a) the periodic or incidental service fees, or the method of calculating such fees, that may be charged under the credit agreement; or
- (b) the rate of interest applicable to a credit agreement, except with respect to a credit agreement with a variable interest rate.

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(2) Except as otherwise provided for in this section, a credit provider must give written notice of at least five business days to the consumer setting out particulars of a change concerning—

- (a) the rate of interest;
- (b) the amount of a credit fee or charge; or
- (c) a change in the frequency or time for payment of a credit fee or charge.

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(3) In respect of a credit agreement that has a variable interest rate, the credit provider must give written notice to the consumer, no later than **30** business days after the day on which a change in the variable interest rate takes effect, setting out—

- (a) the new rate and any further prescribed information; or
- (b) if a rate is determined by referring to a reference rate as contemplated in section **103(4)**, the new reference rate.

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## **Maximum rates of interest, fees and charges**

**105.** (1) The Minister, after consulting the National Credit Regulator, may prescribe a method for calculating—

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- (a) a maximum rate of interest; and
- (b) the maximum fees contemplated in this **Part**,

applicable to each subsector of the consumer credit market, as determined by the Minister.

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

- (a) the need to make credit available to persons contemplated in section **13(a)**;
- (b) conditions prevailing in the credit market, including the cost of credit and the optimal functioning of the consumer credit market; and
- (c) the social impact on low income consumers.

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(3) When establishing regulations contemplated in this section, the Minister—

- (a) must establish different maximums for credit agreements within each subsector of the consumer credit market; and
- (b) may prescribe the method, consistent with section **101(3)**, for allocating service fees between the provision of credit and the provision of related financial services, in circumstances in which a credit provider offers multiple financial services under a single agreement.

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## **Credit insurance**

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

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- (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 sub-paragraph(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. 5
- (2) Despite subsection (1), a credit provider must not offer or demand that the consumer purchase or maintain insurance that is—
- (a) unreasonable; or 10
  - (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. 15
- (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); 20
  - (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 25
  - (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; 30
  - (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; 35
  - (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 any remaining proceeds of the policy must be paid to the consumer. 40
- (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; 45
    - (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.

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(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.

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