

## Conflicting legislation

**67.** In the case of an inconsistency between a provision of this ~~Part~~ read with any relevant definition in section 1, and a provision of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the provisions of this Part and that Act apply concurrently, to the extent that the provisions of this Part are not excluded in terms of section 5 of that Act. 10

## Right to confidential treatment

**68.** (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— 15

- (a) use that information only for a purpose permitted or required in terms of this Act, other national legislation or applicable provincial legislation; and
- (b) report or release that information only to the consumer or prospective consumer, or to another person— 20
  - (i) to the extent permitted or required by this Act, other national legislation or applicable provincial legislation; or
  - (ii) as directed by—
    - (aa) the instructions of the consumer or prospective consumer; or 25
    - (bb) an order of a court or the Tribunal.

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

## National register of credit agreements

**69.** (1) The Minister may require the National Credit Regulator to establish and maintain, in the prescribed manner and form, a single national register of outstanding credit agreements based on the information provided to it in terms of this section. 30

(2) Upon entering into or amending a credit agreement, other than a pawn transaction or an incidental credit agreement, the credit provider must report either directly to the national register established in terms of this section, or to a credit bureau, in the prescribed manner and form, and within the prescribed time the following information, subject to subsection (6): 35

- (a) The credit provider's name, principal business address, and registration number, if any;
- (b) the name and address of the consumer; 40
- (c) if the consumer is—
  - (i) a natural person, their identity number, or in the case of a person who is not a South African citizen and who does not have an identity number, their passport number; or
  - (ii) a juristic person, its registration number; 45
- (d) if the agreement is a credit facility, the credit limit under that facility, and the expiry date of the agreement, if any; and

- (e) if the agreement is a credit transaction or credit guarantee—
  - (i) the principal debt under the agreement;
  - (ii) the particulars of any previously existing credit agreement that was terminated or satisfied in connection with the making of the new agreement;
  - (iii) the amount and schedule of each payment due under the agreement; and
  - (iv) the date on which the consumer’s obligations will be fully satisfied if the agreement is fully complied with.

5

(3) A credit provider must report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (2), in the prescribed manner and form, either directly to the national register established in terms of this section, or to a credit bureau.

10

(4) If a person transfers to another person the rights of a credit provider under a credit agreement referred to in subsection (2)—

- (a) the person who transfers those rights must report the particulars of that transfer, in the prescribed manner and form, to the national register established in terms of this section; and
- (b) the person to whom those rights are transferred must satisfy any subsequent obligations of the credit provider under this section.

15

(5) A credit bureau must transmit to the national register established in terms of this section, in the prescribed manner and form, any information reported to it by a credit provider in terms of this section.

20

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

**Credit bureau information**

25

70. (1) In this section, “consumer credit information” means information concerning—

- (a) a person’s credit history, including 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 this Act, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters;
- (b) 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), and related matters;
- (c) 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; or
- (d) 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.

30

35

40

(2) A registered credit bureau must—

- (a) accept the filing of consumer credit information from any credit provider on payment of the credit bureau’s filing fee, if any;
- (b) accept without charge the filing of consumer credit information from the consumer concerned for the purpose of correcting or challenging information otherwise held by that credit bureau concerning that consumer;
- (c) take reasonable steps to verify the accuracy of any consumer credit information reported to it;

45

50

- (d) retain any consumer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer;
  - (e) maintain its records of consumer credit information in a manner that satisfies the prescribed standards; 5
  - (f) promptly expunge from its records any prescribed consumer credit information that, in terms of the regulations, is not permitted to be entered in its records or is required to be removed from its records;
  - (g) issue a report to any person who requires it for a prescribed purpose or a purpose contemplated in this Act, upon payment of the credit bureau's fee except where the Act explicitly provides that no fee be charged; 10
  - (h) not draw a negative inference about, or issue a negative assessment of, a person's creditworthiness merely on the basis that the credit bureau has no consumer credit information concerning that person; and
  - (i) not knowingly or negligently provide a report to any person containing inaccurate information. 15
- (3) In addition to—
- (a) the consumer credit information Contemplated in subsection (2), a credit bureau may receive, compile and report only other prescribed information in respect of a consumer; and 20
  - (b) the sources of consumer credit information contemplated in subsection (2), a credit bureau may receive consumer credit information in respect of a consumer only from other prescribed persons.
- (4) The Minister may prescribe—
- (a) standards for the filing, retention and reporting of consumer credit information by credit bureaux, in addition to, or in furtherance of the requirements set out in this section; and 25
  - (b) maximum fees that may be charged to a consumer for accessing consumer credit information concerning that person.
- (5) For the purpose of monitoring the consumer credit market to detect apparent patterns of reckless credit granting and over-indebtedness, researching the accessibility and use of credit by persons contemplated in section 13(a), and otherwise exercising its mandate to research consumer credit issues and to investigate and enforce compliance with this Act, the National Credit Regulator may— 30
- (a) require any credit bureau to provide periodic synoptic reports of aggregate consumer credit information in the prescribed manner and form to the National Credit Regulator, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported; and 35
  - (b) *make* further reasonable requests for information from a credit bureau related to the information contemplated in paragraph (a); and 40
  - (c) analyse information provided to it under this section or section 69.
- (6) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

## Removal of record of debt adjustment or judgment

- 71.** (1) A consumer whose debts have been re-arranged in terms of ~~Part D~~ **of this Chapter**, may apply to a debt counsellor at any time for a clearance certificate relating to that debt re-arrangement. 45
- (2) A debt counsellor who receives an application in terms of subsection (1), must—
- (a) investigate the circumstances of the debt re-arrangement; and
  - (b) either— 50

- (i) issue a clearance certificate in the prescribed form if the consumer has fully satisfied all the obligations under every credit agreement that was subject to the debt re-arrangement order or agreement, in accordance with that order or agreement; or
  - (ii) refuse to issue a clearance certificate, in any other case. 5
- (3) If a debt counsellor refuses to issue a clearance certificate contemplated in subsection (2)(b)(i) the consumer may apply to the Tribunal to review that decision, and if the Tribunal is satisfied that the consumer is entitled to the certificate in terms of subsection (2)(b)(i), the Tribunal may order the debt counsellor to issue a clearance certificate to the consumer. 10
- (4) A consumer to whom a clearance certificate is issued in terms of this section may file a certified copy of that certificate with the national register established in terms of section 69 or any credit bureau.
- (5) Upon receiving a copy of a clearance certificate, a credit bureau, or the national credit register, must expunge from its records— 15
- (a) the fact that the consumer was subject to the relevant debt re-arrangement order or agreement;
  - (b) any information relating to any default by the consumer that may have—
    - (i) precipitated the debt re-arrangement; or
    - (ii) been considered in making the debt re-arrangement order or agreement; 20
 and
  - (c) any record that a particular credit agreement was subject to the relevant debt re-arrangement order or agreement.
- (6) Upon receiving a copy of a court order rescinding any judgment, a credit bureau must expunge from its records all information relating to that judgment. 25
- (7) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

## Right to access and challenge credit records and information

- 72.** (1) Every person has a right to—
- (a) be advised by a credit provider within the prescribed time before any prescribed adverse information concerning the person is reported by it to a credit bureau, and to receive a copy of that information upon request; 30
  - (b) inspect any credit bureau, or national credit register, file or information concerning that person—
    - (i) without charge— 35
      - (aa) as of right once within any period of twelve months;
      - (bb) if so ordered by a court or the Tribunal; and
      - (cc) once within a reasonable period after successfully challenging any information in terms of this section, for the purpose of verifying whether that information has been corrected; and 40
    - (ii) at any other time, upon payment of the inspection fee of the credit bureau or national credit register, if any;
  - (c) challenge the accuracy of any information concerning that person—
    - (i) that is the subject of a proposed report contemplated in paragraph (a); or
    - (ii) that is held by the credit bureau or national credit register, as the case may be, 45
 and require the credit bureau or National Credit Regulator, as the case may be, to investigate the accuracy of any challenged information, without charge to the consumer; and
  - (d) be compensated by any person who reported incorrect information to a registered credit bureau or to the National Credit Register for the cost of correcting that information. 50

(2) A credit provider must not require or induce a prospective consumer to obtain or request a report from a credit bureau in connection with an application for credit or an assessment under section 81.

(3) If a person has challenged the accuracy of information proposed to be reported to a credit bureau or to the national credit register, or held by a credit bureau or the national credit register, the credit provider, credit bureau or national credit register, as the case may be, must take reasonable steps to seek evidence in support of the challenged information, and within the prescribed time after the filing of the challenge must—

5

(a) provide a copy of any such credible evidence to the person who filed the challenge, or

10

(b) remove the information, and all record of it, from its files, if it is unable to find credible evidence in support of the information,

subject to subsection (6).

(4) Within 20 business days after receiving a copy of evidence in terms of subsection (3)(a), the person who challenged the information held by a credit provider, credit bureau or national credit register may apply in the prescribed manner and form to the National Credit Regulator to investigate the disputed information as a complaint under section 136.

15

(5) A credit bureau or the National Credit Register may not report information that is challenged until the challenge has been resolved in terms of subsection (3)(a) or (b).

20

(6) On application by a credit provider, credit bureau or the National Credit Regulator, as the case may be, the Tribunal may make an order limiting the applicant's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's—

(a) particular request or requirement is frivolous, unfounded or wholly unreasonable; or

25

(b) history and pattern of such requests or requirements are frivolous or vexatious.

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

## Verification, review and removal of consumer credit information

30

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

(a) the nature of, time-frame, form and manner in which consumer credit information held by credit bureaux must be reviewed, verified, corrected or removed; and

35

(b) the time-frame and schedule for the exercise by consumers of their rights in terms of section 72(1),

within a period of one year after the regulations being promulgated.

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

(a) consider amongst other things—

40

(i) the predictive nature of such information; and

(ii) the socio-economic impact on consumers of the removal of such information; and

(b) engage in consultation with affected stakeholders.

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

45