

REPUBLIC OF SOUTH AFRICA

NATIONAL CREDIT AMENDMENT BILL

*(As introduced in the National Assembly (section 76); initiated by the Portfolio Committee
on Trade and Industry; Bill and prior notice of its introduction published in
Government Gazette No. 41274 of 24 November 2017)
(The English text is the official text of the Bill)*

(PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY)

[B 30—2018]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Credit Act, 2005, so as to provide for debt intervention; to insert new definitions; to include the evaluation and referral of debt intervention applications as a function of the National Credit Regulator and to provide for the creation of capacity within the National Credit Regulator and logistical arrangements to execute this function; to include the consideration of a referral as a function of the Tribunal; to provide for the recordal of information related to debt intervention; to require a debt counsellor to investigate whether an agreement is reckless; to provide for a court to enquire into and either refer a matter for debt intervention or make an order related to debt intervention; to provide for a Magistrate's Court and the Tribunal to determine the maximum interest, fees or other charges when re-arranging debt and for guidance to be prescribed in this regard; to provide for an application for debt intervention and the evaluation thereof; to provide for the Tribunal to re-arrange a consumer's obligations and make an order in respect of an unlawful credit agreement; to provide for orders related to debt intervention and rehabilitation in respect of such an order; to provide for mandatory credit life insurance to be prescribed; to provide for offences related to debt intervention, prohibited credit practices, selling or collecting prescribed debt and related to failure to register as required by the Act; to provide for measures when an offence is committed by a person other than a natural person; to provide for penalties in relation to the newly created offences; to provide for the Tribunal to change or rescind an order under certain circumstances; to require the Minister to make regulations related to a financial literacy programme; to provide in a transitional provision for the application of this Amendment Act to credit agreements entered into before its commencement; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the purpose of the National Credit Act, 2005 (Act No. 34 of 2005), is to promote and advance the social and economic welfare of South Africans; to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry; and to protect consumers;

AND WHEREAS there are categories of consumers for whom existing natural person insolvency measures are inaccessible, either because of the focus that these measures place on benefit to credit providers, or the cost involved with such natural person insolvency measures;

AND WHEREAS without suitable alternative natural person insolvency measures being made available to over-indebted individuals who do not have sufficient income or assets to show benefit to creditors, to afford the costs associated with an administration order, or to be an economically viable client for a debt counsellor, it is not only an insurmountable challenge for them to manage or improve their financial position, but it also amounts to unjustified and unfair discrimination on socio-economic grounds;

AND WHEREAS to give effect to the purpose of the National Credit Act, 2005 (Act No. 34 of 2005), all consumers must be afforded protection through fair, transparent, sustainable and responsible processes,

B E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 34 of 2005, as amended by section 1 of Act 19 of 2014

1. Section 1 of the National Credit Act, 2005 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “confidential information” of the following definition:

“**‘Constitution’** means the Constitution of the Republic of South Africa, 1996;”;

(b) by the insertion after the definition of “credit co-operative” of the following definitions: 10

“**‘debt intervention’** means a measure as contemplated in section 86A, which aims to assist identified consumers for whom existing natural person insolvency measures are not accessible in practice;

‘debt intervention applicant’ means a natural person, or natural persons who own a joint estate, who on the date of submission of the application for debt intervention contemplated in section 86A— 15

(a) is a consumer under unsecured credit agreements, unsecured short term credit transactions or unsecured credit facilities only;

(b) receives no income, or if he or she, or the joint estate, receives an income or has a right to receive income, regardless of the source, frequency or regularity of that income, that gross income did not, on an average for the six months preceding the date of the application for debt intervention exceed R7500 or such an amount as may be prescribed by section 171(2A)(a), per month; 20

(c) is over-indebted, whether due to a change in personal circumstances or other circumstances; and 25

(d) is not sequestrated or subject to an administration order;”;

(c) by the insertion after the definition of “equality court” of the following definitions: 30

“**‘extinguish’** means, save as is specifically provided in this Act—

(a) the cessation of all rights and obligations inherent to, or resulting from, a credit agreement; and

(b) the cessation of any rights or obligations that may arise in law, whether statutory or otherwise, because of the cessation contemplated in paragraph (a), 35

prospectively from the date on which the act of extinguishment becomes effective;

‘financial literacy’ means the knowledge, ability and opportunity to make sound money management choices;”;

(d) by the insertion after the definition of “juristic person” of the following definition: 40

“**‘knowing’** or **‘knowingly’**, when used with respect to a person, and in relation to a particular matter, means that the person either—

(a) had actual knowledge of the matter; or 45

(b) was in a position in which the person reasonably ought to have—
 (i) had actual knowledge;
 (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or

- (iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;”;
- (e) by the insertion after the definition of “mortgage agreement” of the following definition: 5
- “**‘National Assembly’** means the House of Parliament referred to in section 42(1)(a) of the Constitution;” and
- (f) by the insertion after the definition of “this Act” of the following definition: 10
- “**‘total unsecured debt’** means the total of all principal debts due by a debt intervention applicant under the unsecured credit agreements, unsecured short term credit transactions or unsecured credit facilities to which the debt intervention applicant is a party;”.

Amendment of section 3 of Act 34 of 2005

2. Section 3 of the principal Act is hereby amended by the insertion after paragraph (g) of the following paragraph: 15
- “(gA) providing appropriate debt intervention for qualifying consumers;”.

Insertion of section 15A in Act 34 of 2005

3. The following section is hereby inserted after section 15 of the principal Act:

“Other functions of National Credit Regulator

- 15A.** (1) The National Credit Regulator must assist a debt intervention applicant— 20
- (a) with the process of being declared over-indebted;
- (b) to have his or her obligations, or the obligations of the joint estate, re-arranged;
- (c) to have his or her debt intervention application considered for an order contemplated in section 87A; or 25
- (d) to have his or her application for rehabilitation contemplated in section 88B be considered by the Tribunal.
- (2) To enable the National Credit Regulator to assist a debt intervention applicant as contemplated in subsection (1), the Chief Executive Officer or any employee duly authorised by the Chief Executive Officer— 30
- (a) may appoint any suitable employee of the National Credit Regulator, or any other suitable person employed by the State, as a debt intervention officer; and
- (b) must issue each debt intervention officer with a certificate in the prescribed form stating that the person has been appointed as a debt intervention officer and as such is deemed to have been registered as a debt counsellor, as contemplated in section 44, for purposes of the services contemplated in subsection (1) only.”. 35

Amendment of section 27 of Act 34 of 2005, as amended by section 121 of Act 68 of 2008 40

4. Section 27 of the principal Act is hereby amended by the substitution in paragraph (a) for subparagraph (i) of the following subparagraph: 45
- “(i) application or referral that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application or referral; or”.

Amendment of section 60 of Act 34 of 2005

5. Section 60 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 50
- “(1) [Every] Save as is provided in this Act, every adult natural person, and every juristic person or association of persons, has a right to apply to a credit provider for credit.”.

Insertion of section 69A in Act 34 of 2005

6. The following section is hereby inserted after section 69 of the principal Act:

“National record of debt intervention

- 69A.** (1) The National Credit Regulator must keep a record of applications for debt intervention contemplated in section 86A, the status of such applications and any orders granted in respect of such applications. 5
- (2) The record related to debt intervention may be published with the consent of the relevant debt intervention applicant, or as is required by this Act or any other applicable law.
- (3) The Minister may, in accordance with section 171, prescribe the information to be recorded in the record contemplated in subsection (1).” 10

Amendment of section 70 of Act 34 of 2005

7. Section 70 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 15
- “*(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, an application for, status of and orders granted in respect of debt intervention, and related matters;”; and 20
- (b) by the insertion in subsection (2) after paragraph (a) of the following paragraph: 25
- “(aA) accept without charge the filing of consumer credit information from the National Credit Regulator related to a debt intervention application, the status of such application and any order granted in respect of such application;”.

Amendment of the section 71 of Act 34 of 2005, as amended by section 21 of Act 19 of 2014 30

8. Section 71 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection: 35
- “(1A) A debt intervention applicant whose debts have been re-arranged in terms of Part D of this Chapter, must be issued with a clearance certificate by the National Credit Regulator within seven business days after the debt intervention applicant has—
- (a) satisfied all the obligations under every credit agreement that was subject to that debt re-arrangement order or agreement, in accordance with that order or agreement; or 40
- (b) demonstrated as prescribed—
- (i) financial ability to satisfy the future obligations in terms of the re-arrangement order; or
- (ii) that there are no arrears on the re-arranged agreements contemplated in subparagraph (i); and 45
- (iii) that all obligations under every credit agreement included in the re-arrangement order or agreement, other than those contemplated in subparagraph (i), have been settled in full, and the National Credit Regulator must submit a copy of the clearance certificate to all registered credit bureaux.”; and 50
- (b) by the insertion after subsection (3) of the following subsection: 55
- “(3A) If the National Credit Regulator decides not to issue or fails to issue a clearance certificate as contemplated in subsection (1A), or fails to submit a copy to all registered credit bureaux, the debt intervention applicant may apply to the Tribunal to review that decision or failure to issue, and if the Tribunal is satisfied that the debt intervention applicant