

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CONSUMER PROTECTION
BILL**

[B 19B—2008]

*(As amended by the Portfolio Committee on Trade and Industry
(National Assembly))
(The English text is the official text of the Bill)*

[B 19C—2008]

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AMENDMENTS AGREED TO
CONSUMER PROTECTION BILL
[B 19B—2008]

LONG TITLE

1. On page 2, in line 12, after “(Act No. 71 of 1988),” to insert “and”
2. On page 2, from line 12, to omit “and the Businesses Act, 1991 (Act No. 71 of 1991),”

PREAMBLE

1. On page 2, in second line, after “apartheid” to omit “other”

CLAUSE 1

1. On page 9, in line 44, to omit “, Bluetooth”.
2. On page 9, in line 45, to omit “website, internet connection”.
3. On page 12, in line 5, after “an” to insert “organ of state or”
4. On page 12, in line 28, after “advice” to insert “or intermediary services”.
5. On page 12, in line 56, to omit “, hire and sell by instalment” and to insert “and hire”.

CLAUSE 2

1. On page 14, in line 35, after “provision” to insert “provided that in the case of hazardous chemical products only the provisions of this Act relating to consumer redress will apply.”
2. On page 14, after line 35, to add the following subsection:

“(10) No provision of this Act must be interpreted so as to preclude a consumer from exercising any rights afforded in terms of the common law.”

CLAUSE 4

1. On page 15, in line 50, to omit “expressly”.

CLAUSE 5

1. On page 16, from line 37, up to and including “or” in line 50, to omit subsection (2) (a) and (b) and to substitute:
 - “(2) This Act does not apply to any transaction—
 - (a) in terms of which goods or services are promoted or supplied to the State;”
 - (b) in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction,

equals or exceeds the threshold value determined by the Minister in terms of section 6; or”

2. On page 16, after line 52, to insert the following paragraphs:
 - “(d)that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act;
 - (e) pertaining to services to be supplied under an employment contract;
 - (f) giving effect to a collective bargaining agreement within the meaning of section 23 of the Constitution and the Labour Relations Act, 1995 (Act No. 66 of 1995); or
 - (g) giving effect to a collective agreement as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995).”
3. On page 17, in line 24, to omit “value of that transaction” and to substitute “size of the juristic person”

CLAUSE 6

1. On page 17, from line 39, to omit “value of transactions” and to substitute “size of the juristic person”
2. On page 17, in line 40, to omit “(i)”.

CLAUSE 13

1. On page 21, from line 12, to omit all the words from “unless” up to and including “consumers” in line 15, and to substitute:

“unless the supplier—

 - (i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer’s right to choice;
 - (ii) can show that the bundling of those goods or services results in economic benefit for consumers; or
 - (iii) offers bundled goods or services separately and at individual prices.”

CLAUSE 14

1. On page 21, after line 22, to insert the following subsection:

“(1) This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value”.
2. On page 21, in line 39, after “writing” to insert “or any other recordable form,”
3. On page 21, in line 55, after “supplied” to insert “services provided”

CLAUSE 22

1. On page 27, in line 9, to omit “prescribed”
2. On page 27, in line 9, after “form” to insert “prescribed in terms of this Act or any other legislation”

3. On page 27, after line 28, to insert the following subsection:

“(4) Guidelines published in terms of subsection (3) may be published for public comment.”

CLAUSE 24

1. On page 29, after line 10, to add the following subsection:

“(6) Any person who produces, supplies, imports or packages any prescribed goods must display on, or in association with the packaging of those goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with applicable regulations.”

CLAUSE 32

1. On page 31, in line 15, to omit “at home”

CLAUSE 40

1. On page 36, in line 40, to omit “person” and to substitute “supplier or an agent of the supplier”
2. On page 36, in line 40, to omit “an individual” and to substitute “a consumer”
3. On page 36, in line 41, after “pressure” to insert “duress”

CLAUSE 48

1. On page 41, in line 39, to omit “manifestly”

CLAUSE 50

1. On page 42, after line 56, to add the following subsection:

“(3) If a consumer agreement between a supplier and the consumer is not in writing, a supplier must keep a record of transactions entered into over the telephone or any other recordable form as prescribed.”

CLAUSE 51

1. On page 44, after line 7, to insert the following subsection:

“(4) This section does not preclude a supplier to require a personal identification code or number in order to facilitate a transaction that in the normal course of business necessitates the provision of such code or number.”

CLAUSE 53

1. On page 45, in line 27 and 32, to omit “design”

2. On page 45, in line 29, to omit “applicable public regulation” and to substitute “other law”.

CLAUSE 54

2. On page 45, in line 57, to omit “at the option of the supplier”

CLAUSE 56

1. On page 46, in line 53, after “either” to insert “at the direction of the consumer”
2. On page 46, in line 56, to omit “at the option of the supplier, subject to subsection (3).”
3. On page 46, in line 57, to omit “elects in terms of subsection (2) to repair” and to substitute “repairs”

CLAUSE 58

1. On page 47, in line 31, to omit “prescribed” and to substitute “applicable”

CLAUSE 59

1. On page 47, in line 43, after “any” to omit “public regulation” and to substitute “national legislation”
2. On page 47, after line 55, to insert the following subsection:

“(2) If any regulation or industry waste management plan approved by any other legislation for the management of a specific waste type applies, the consumer may dispose or deposit the goods to a collection facility provided for in the regulation or industry waste management plan”.

CLAUSE 61

1. On page 48, from line 32, to omit subsection (1).
2. On page 48, from line 59, up to and including “person” on page 49, in line 2, to omit subparagraph (i) and (ii) and to substitute “that person’s role in marketing the goods to consumers.”

CLAUSE 66

1. On page 51, in line 25, after “may” to insert “, in consultation with the Minister of Environmental Affairs and Tourism”

CLAUSE 69

1. On page 52, from line 37, up to and including “(i)—” in line 38, to omit the preceding words of subparagraph (ii).
2. On page 52, in lines 40, 42 and 44, to omit “(aa), (bb) and (cc)” and to substitute respectively “(ii), (iii) and (iv)”

3. On page 52, from line 48, up to and including “ “71” in line 54, to omit subsection (2).

CLAUSE 70

Clause rejected.

1. That the following be a new clause:

“Alternative dispute resolution

70. (1) A consumer may seek to resolve any dispute in respect of a transaction or agreement with a supplier by referring the matter to an alternative dispute resolution agent who may be—

- (a) an ombud with jurisdiction, if the supplier is subject to the jurisdiction of any such ombud;
- (b) an industry ombud accredited in terms of section 82(6), if the supplier is subject to the jurisdiction of any such ombud;
- (c) a person or entity providing conciliation, mediation or arbitration services to assist in the resolution of consumer disputes, other than an ombud with jurisdiction, or an accredited industry ombud; or
- (d) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court.

(2) If an alternative dispute resolution agent concludes that there is no reasonable probability of the parties resolving their dispute through the process provided for, the agent may terminate the process by notice to the parties, whereafter the party who referred the matter to the agent may file a complaint with the Commission in accordance with section 71.

(3) If an alternative dispute resolution agent has resolved, or assisted parties in resolving their dispute, the agent may—

- (a) record the resolution of that dispute in the form of an order; and
- (b) if the parties to the dispute consent to that order, submit it to the Tribunal or the High Court to be made a consent order in terms of its rules.

(4) With the consent of a complainant, a consent order confirmed in terms of subsection (3)(b) may include an award of damages to that complainant.”

CLAUSE 73

1. On page 53, line 47, to omit “receiving a report of” and to substitute “concluding”.

CLAUSE 74

1. On page 54, after line 29, to insert the following subsection:
 - “(2) After hearing a motion for a consent order, the Tribunal or a court must—
 - (a) make an order as agreed to and proposed by the Commission and the respondent;
 - (b) indicate any changes that must be made in the draft order before it will make the order; or
 - (c) refuse to make the order.”

CLAUSE 87

1. On page 60, in line 37, to omit “suitably qualified and experienced person” and to substitute “person with suitable qualifications and experience in economics, law, commerce, industry or public affairs”
2. On page 60, after line 41, to insert the following subsection:
 - “(2) Before the Minister makes an appointment in terms of subsection (1) the relevant Parliamentary Committee must be consulted with respect to such appointment,”
3. On page 61, after line 4, to insert the following subsection:
 - “(6) (a) The Minister must appoint at least one person, and may appoint other persons with suitable qualifications and experience in economics, law, commerce, industry or public affairs as Deputy Commissioner to assist the Commissioner in carrying out the functions of the Commission.
 - (b) The Minister must designate a Deputy Commissioner to perform the functions of the Commission whenever—
 - (i) the Commissioner is unable for any reason to perform the functions of the Commissioner; or
 - (ii) the office of the Commissioner is vacant.”
4. On page 61, in line 6, after “Commissioner’s” to insert “and Deputy Commissioner”

CLAUSE 93

1. On page 62, after line 31, to add the following subsection:
 - “(2) Codes developed by the Commission in terms of subsection (1) must be published for public comment before finalisation.

CLAUSE 110

1. On page 68, in line 51, to omit subsection (1) and to substitute:
 - (1) It is an offence for any person to alter, obscure, falsify, remove or omit a displayed price, labelling or trade description without authority.”

CLAUSE 112

1. On page 69, form line 14, to omit “only in the circumstances expressly provided for in this Act” and to substitute “in respect of prohibited and required conduct”.

CLAUSE 119

1. On page 71, in line 6, to omit “, unless the contrary is proved”.
2. On page 71, in line 7, to omit paragraph (b) and to substitute:

“(b) an order certified by the Chairperson of the Tribunal is *prima facie* proof of the contents of the order.”

CLAUSE 120

1. On page 71, after line 32, to insert the following paragraph:

“(d) make regulations relating to the unfair, unreasonable or unjust contract terms;”

SCHEDULE 1

1. On page 73, after line 4, to insert the following item:

“Amendment of section 27 of Act 34 of 2005

1. Section 27 of the National Credit Act, 2005 (in this Schedule referred to as the principal Act) is hereby amended by the insertion of the words preceding paragraph (a) of the following words before “may”:

“or the Consumer Protection Act, 2008”
2. On page 75, after line 2, to insert the following paragraph:

“(a) by the substitution for subsection (1) of the following subsection:

“(1) The Tribunal may impose an administrative fine [**only in the circumstances expressly provided for**] in respect of prohibited or required conduct in terms of this Act or the Consumer Protection Act, 2008.”
3. On page 75, after line 32, to insert the following item:

“B: Electronic Communications and Transactions Act, 2002

Amendment of section 1 of Act 25 of 2002

1. Section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), is hereby amended by—

 - (a) the deletion of the definition of “**Consumer Affairs Committee**”; and
 - (b) the insertion before the definition of “**consumer**” of the following definition:

“**Commission**” means the National Consumer Commission as defined in section 1 of the Consumer Protection Act, 2008.”

Amendment of section 49 of Act 25 of 2002

1. Section 49 of the Electronic Communications Act, 2002 (Act 25 of 2002) is hereby substituted for the following section:

“49. Complaints to [Consumer Affairs Committee] Commission

A consumer may lodge a complaint with the [**Consumer Affairs Committee**] Commission in respect of any non-compliance with the provisions of this Chapter by a supplier.”

Substitution of expression in Act 25 of 2002

3. The Electronic Communications Act, 2002 (Act 25 of 2002) is hereby amended by the substitution for the expression “Consumer Affairs Committee”, wherever it occurs in the Act, of the expression, “Commission”.

SCHEDULE 2

1. On page 79, after line 23, to add the following item:

“Exclusion of certain laws

10. The exclusion of the Short Term Insurance Act, 1998 (Act No. 53 of 1998), and the Long Term Insurance Act, 1998 (Act No.52 of 1998), is subject to those sector laws being aligned with the consumer protection measures provided for in this Act within a period of 18 months from the commencement of this Act, failing which, the provisions of this Act will apply.”

SUBSTITUTION OF EXPRESSION

2. To omit the words “potential consumer” wherever it occurs.