

**NOTICE 1258 OF 2003****DEPARTMENT OF TRADE AND INDUSTRY  
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, in terms of section 12 (6) (a) (iii) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), hereby give notice that I intend publishing the following notice in the *Government Gazette*. Interested parties are hereby invited to comment on the proposed notice. These comments must be directed to the address which appears at the end of the proposed notice.

**NOTICE IN TERMS OF SECTION 12 (6) OF THE  
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, by virtue of the powers vested in me by section 12(6) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), and after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 949 of 2001 published in Government Gazette No. 22298 of 18 May 2001, which report was published in Notice 1249 in Government Gazette No. 24738 of 11 April 2003, promulgate in the public interest the notice in the Schedule.

**SCHEDULE**

1. In this notice, unless the context indicates otherwise -

"contracted subscriber" means a credit grantor accepted by a credit bureau as a subscriber;

"credit bureau" means a private business which acquires, records, maintains and makes available to contracted subscribers information concerning the manner in which consumers conduct their credit and business dealings;

"credit grantor" means a business or any other person who extend credit facilities;

"requester" means a person as defined in the Promotion of Access to Information Act, 2000, having access to all the information a contracted subscriber has access to.

2. A credit bureau shall adhere to the following conditions and requirements:

- (1) A credit bureau may only register credit grantors which extend credit to consumers fairly and without unfair discrimination, as subscribers.
- (2) A credit bureau may only keep information relevant to the credit and business dealings of consumers on file. Information of a personal nature may not be recorded, except that which is necessary for evaluation and correlation.

- (3) Whenever a credit bureau compiles a record, it must follow reasonable procedures to ensure that it obtains accurate, relevant and unbiased information about the person to whom the record relates.
- (4) A credit bureau must maintain a record of all subscribers who receive the information for a minimum period of two years and of the source of each item of information.
- (5) A credit bureau shall take responsibility for the correctness of information recorded by it and must therefore take reasonable steps to rectify information if incorrect information is brought to its attention.
- (6) Credit bureaus' systems must provide information wherein a credit grantor has to indicate that s/he conducted a credit assessment before granting credit.
- (7) A credit bureau must ensure that its name will be revealed to the consumer in the case where the credit record is the reason for the refusal of debt.
- (8) A credit bureau should not accept information from subscribers unless a customer's permission has been obtained to access data concerning him/her in assessing risk and sharing his/her payment habits with other credit grantors.
- (9) A credit bureau may not request information regarding the amount of credit applied for by a client.
- (10) When there is a *bona fide* dispute, a credit bureau shall not go ahead with listing.
- (11) Where accounts are in dispute, such dispute must be noted and made available to subscribers. A credit bureau must remove the disputed information within 5 business days from the date it was brought to the attention of the credit bureaus if the correctness thereof cannot be verified. In this regard, if the requested information is not received from the subscriber within the 5 business days, the information will be regarded as inaccurate.
- (12) Where a borrower has fully discharged arrears and resumed payment of full instalments in accordance with the contract, such information shall be made available by the credit bureaus to all subscribers. This information must be provided simultaneously with the credit history of the consumer and credit bureaus need to ensure that their systems can accommodate this principle.
- (13) Where the consumer does not dispute the information but does have a reasonable explanation for the occurrence(s), the credit bureau must

place a brief explanation on file provided satisfactory evidence corroborating the explanation is produced and the explanation is not frivolous or irrelevant.

- (14) A credit bureau shall only accept subscribers who inform consumers about the processes followed when granting or refusing credit, such as the utilization of information not provided by applicants to evaluate their credit worthiness and that consumers are given the opportunity to verify the additional information to ascertain whether it is correct, should it have a negative impact on the application.
- (15) Access to consumers records must be made available by a credit bureau to a requester as defined in the Promotion of Access to Information Act, 2000, when requested in the prescribed form free of any charge.
- (16) A credit bureau shall only accept subscribers that follow due process before default reporting takes place. In this regard subscribers / credit grantors should inform debtors prior to listing as defaulters in the public domain section by way of a prominent clause on the original application form and by written notice to the last known address, at least 28 days prior to forwarding the information to a credit bureau.
- (17) Whilst privacy of information between a bank and its customers is maintained, negative information regarding the borrower's credit record may be supplied to a credit bureau in the public interest to protect other credit grantors.
- (18) A credit bureau must display on their premises the procedures to view a record and have a detailed brochure available on how to correct or improve one's credit profile as well as the names, addresses and telephone number of bodies to whom complaints can be directed. Complaints handling procedures and the manner in which complaints may be lodged must be prominently displayed at the premises of the credit bureaus.
- (19) Only judgements wherein the initials and the identity numbers of the persons involved are stated may be recorded by the credit bureaus.
- (20) A credit bureau must ensure that subscribers prominently display at their premises complaints handling procedures and the manner in which and where complaints may be lodged.
- (21) A credit bureau is not exempted from the requirements of the Promotion of Access to Information Act, 2000 and strict adherence to the legislation is obligatory.
- (22) A credit bureau must upon request disclose to a consumer, who has satisfied the credit bureau regarding his or her identity, which

identification process should not be unduly cumbersome or difficult, the nature and substance of all information and the sources of the information in its files on that consumer at the time of the request. A credit bureau must make the disclosures required during normal business hours and on reasonable notice. The disclosures required must be made to the consumer in person, provided he or she appears in person and furnishes proper identification. Written disclosure in response to a telephonic and/or written request may be made only if the bureau is satisfied that the request is from the consumer concerned.

- (23) A credit bureau must provide trained personnel to explain to a consumer any information furnished and must assist consumers by providing reasonable advice on how to obtain changes to their records where possible.
- (24) In the event of a dispute between a consumer and a credit bureau, which is a member of an association of credit bureaus, about the accuracy or relevance of information on file, the credit bureau must request the association to investigate the matter and give a ruling on it. In the case of a dispute between a consumer and a credit bureau that is not a member of an association, the Consumer Affairs Committee or any provincial consumer affairs office may be approached.
- (25) Credit information may not be retained for longer than the following periods:
  - Insolvencies / sequestration and rehabilitations for a period of 10 years.
  - Rehabilitation orders, whether they are granted by applications to court or automatically after the statutory period, remain on the file for 5 years from the date of rehabilitation.
  - Judgements for debt for a maximum of 5 years from date of judgement.
  - Administration orders for 5 years after lapsing or rescission thereof and if not lapsed or rescinded, for 10 years.
  - Default information supplied by subscribers for a maximum of 3 years or until a three year period has elapsed during which no further references to any defaults have been added to the record.
  - Payment profiles are maintained on an ongoing basis and the payments for the past 24 months are recorded.

3. No credit bureau may operate contrary to the above conditions and requirements in which instance the penalties as provided for in section 15 of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act 71 of 1988) are applicable.

4. On the recommendation of the Consumer Affairs Committee I may, in a particular case, in terms of section 12 (6) (c) of the Act in writing, grant exemption from a condition or requirement contemplated in this notice to such extent and for such period and subject to such conditions as may be specified in the exemption. Such applications for exemption must be directed to:

The Secretary  
Consumer Affairs Committee  
Private Bag X84  
PRETORIA  
0001  
(For attention: Mr E Mohamed  
Fax: (012) 320-0579)

**A ERWIN**  
**MINISTER OF TRADE AND INDUSTRY**