

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
DEBT COLLECTORS BILL**

[B 102—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 102A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP
SKULDINVORDERAARS**

[W 102—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 102A—97]

ISBN 0 621 28451 3

AMENDMENTS AGREED TO

DEBT COLLECTORS BILL [B 102—97]

CLAUSE 1

1. On page 2, after line 17, to insert:
 “person” includes a juristic person;

CLAUSE 3

1. On page 4, in line 2, to omit “eight” and to substitute “not more than 10”.
2. On page 4, in line 4, to omit “a judge of a High Court” and to substitute:
 any fit and proper person with a suitable degree of skill and experience
 in the administration of civil law matters
3. On page 4, from line 8, to omit subparagraph (iii) and to substitute:
 (iii) at least two but not more than four debt collectors, two of whom
 shall be appointed after consultation with organisations repre-
 senting debt collectors, who are natural persons and who have
 exercised the occupation of debt collector for at least three
 years;
4. On page 4, in line 14, after “interests” to insert:
 and who, in the opinion of the Minister, is a fit and proper person to
 serve on the Council
5. On page 4, in line 30, to omit all the words from “and” up to and including
 “fine” in line 32.
6. On page 4, in line 41, to omit “appointed in terms of subsection (2)(b)(iii)”
 and to substitute “who is a debt collector”.

CLAUSE 4

1. On page 4, in line 49, to omit “13(3)” and to substitute “16(3)”.

CLAUSE 5

1. On page 6, from line 3, to omit subsection (2) and to substitute:
 (2) The executive committee shall not be competent—
 (a) except in so far as the Council may otherwise direct, to set aside
 or vary a decision of the Council; or
 (b) to exercise the power referred to in section 15(3)(a).

CLAUSE 6

1. On page 6, in lines 9 and 10, to omit “neither a judge nor in” and to substitute “not in the”.

CLAUSE 8

1. On page 6, from line 35, to omit subsection (4).

CLAUSE 10

1. On page 6, in line 52, after “(i)” to insert “subject to subsection (2),”.
2. On page 8, in line 1, to omit all the words from “and” up to and including “fine” in line 3.
3. On page 8, in line 7, to omit “or”.
4. On page 8, in line 8, to omit “and” and to substitute “or”.
5. On page 8, after line 8, to insert:
 - (v) he or she is an unrehabilitated insolvent; or
6. On page 8, after line 11, to insert:

(2) (a) Any person who is not competent to be registered as a debt collector on account of having been convicted of an offence referred to in subsection (1)(a)(i), may in the prescribed manner apply to the Minister to be exempted from the disqualification contemplated in that subsection on the grounds that the circumstances relating to the commission of that offence were of such a nature that the relevant conviction should not disqualify the applicant from exercising the occupation of debt collector.

(b) Upon receipt of an application referred to in paragraph (a), the Minister shall cause—

- (i) such application to be published in the *Gazette*; and
- (ii) such investigation to be conducted into the matter as he or she deems appropriate.

(c) If the Minister is satisfied that the circumstances relating to the relevant offence is of such a nature that it is not likely to affect the suitability of the applicant to exercise the occupation of debt collector, the Minister may, after consultation with the Council, direct that the applicant shall not on account of the relevant conviction be disqualified from registering as a debt collector.

CLAUSE 11

Clause rejected.

CLAUSES 13, 14, 15, 16, 17 AND 18

Clauses rejected.

NEW CLAUSES

That the following be new Clauses:

Register

12. (1) The Council shall keep a register of the names and prescribed particulars of every debt collector whose application for registration under section 9(3) has been approved, or whose registration has been withdrawn.

(2) The register contemplated in subsection (1) shall—

- (a) be published in the *Gazette*;
- (b) be updated every second month by the Council;
- (c) be available for inspection by the public at the prescribed places and times; and
- (d) be submitted to Parliament within 14 days after the publication thereof in the *Gazette*.

Payment of subscription fees

13. (1) Every person registered as a debt collector shall pay to the Council the prescribed fees.

(2) If a debt collector fails to comply with the provisions of subsection (1), the Council may suspend his or her registration as a debt collector until the amount owed by him or her is received by the Council: Provided that if the relevant amount is not paid within three months of the date of suspension of the registration of the debt collector concerned, the Council may withdraw the registration.

(3) Section 16(2) and (3) shall, with the necessary changes, apply to the withdrawal of the registration of a debt collector under subsection (2).

Code of conduct

14. (1) (a) The Council shall, subject to the approval of the Minister, adopt a code of conduct for debt collectors and shall publish such code in the *Gazette*.

(b) The code of conduct, and any amendment thereof, shall be submitted to Parliament within 14 days after publication thereof in the *Gazette*.

(2) The Council may, subject to the approval of the Minister, amend or repeal the code of conduct adopted by it: Provided that such code shall not be wholly repealed by it, unless it is simultaneously replaced by a new code of conduct for debt collectors so adopted and approved by the Minister and, provided further, that the Council shall publish any such amendment, repeal or replacement in the *Gazette*.

(3) The code of conduct drawn up or adopted by the Council and published in the *Gazette* shall be binding on all debt collectors.

Improper conduct by debt collectors

15. (1) A debt collector may be found guilty by the Council of improper conduct if he or she, or a person for whom he or she is vicariously liable—

- (a) uses force or threatens to use force against a debtor or any other person with whom the debtor has family ties or a familial or personal relationship;
- (b) acts towards a debtor or any other person with whom the debtor has family ties or a familial or personal relationship, in an excessive or intimidating manner;

- (c) makes use of fraudulent or misleading representations, including—
 - (i) the simulation of legal procedures;
 - (ii) the use of simulated official or legal documents;
 - (iii) representation as a police officer, sheriff, officer of court or any similar person; or
 - (iv) the making of unjustified threats to enforce rights;
- (d) is convicted of an offence of which violence, dishonesty, extortion or intimidation is an element;
- (e) spreads or threatens to spread false information concerning the creditworthiness of a debtor;
- (f) contravenes or fails to comply with a provision of the code of conduct contemplated in section 14;
- (g) contravenes or fails to comply with any provision of this Act; or
- (h) behaves or acts in any manner amounting to conduct, other than that mentioned in paragraphs (a), (b), (c), (d), (e), (f) or (g), which is improper in terms of a regulation.

(2) The Council may in the prescribed manner investigate an allegation of improper conduct by a debt collector submitted to it in the prescribed manner or have it investigated in the prescribed manner by a committee of members of the Council or by a person or persons nominated by it: Provided that a debt collector whose conduct is being investigated shall be afforded the opportunity, either in person or through a legal representative, of refuting any allegations made against him or her.

(3) If the Council finds a debt collector guilty of improper conduct, the Council may—

- (a) withdraw his or her registration as a debt collector;
- (b) suspend his or her registration for a specified period or pending the fulfilment of a condition or conditions;
- (c) impose on him or her a fine not exceeding the prescribed amount, which fine shall be payable to the Council;
- (d) reprimand him or her;
- (e) recover from him or her the costs incurred by the Council in connection with the investigation;
- (f) order him or her to reimburse any person who the Council is satisfied has been prejudiced by the conduct of such debt collector and to furnish the Council within a specified period with proof of such reimbursement; or
- (g) combine any of the penalties under this subsection.

(4) Any penalty imposed on a debt collector in terms of subsection (3)(a), (b), (c) or (g) may be suspended, either wholly or partially, by the Council on such conditions as the Council deems appropriate.

(5) The Council may in its discretion assign any of the powers conferred on it under this section, except a power referred to in subsection (3)(a), to a committee nominated by it in terms of subsection (2), and may rescind or vary a decision of such a committee.

Withdrawal of registration by Council

16. (1) The Council may withdraw the registration of a debt collector—

- (a) if it appears that in his or her application for registration the applicant has given information that is false in a material respect;
- (b) if at any time after his or her registration—

- (i) he or she is convicted of an offence of which violence, dishonesty, extortion or intimidation is an element;
 - (ii) he or she is found guilty in terms of section 15 of improper conduct;
 - (iii) he or she becomes of unsound mind and is so declared or certified by a competent authority; or
 - (iv) he or she becomes insolvent; or
- (c) in the case of a debt collector who is a company or close corporation, if the registration of a director of the company or a member of the close corporation or an officer of the company or close corporation, not being himself or herself a director or member, as the case may be, is withdrawn in terms of paragraph (b).
- (2) The Council shall not withdraw the registration of a debt collector unless he or she, either in person or through a legal representative, has been given the opportunity to be heard.
- (3) The Council shall give written notice to a debt collector of the withdrawal of his or her registration.

Withdrawal of registration by court

17. (1) If there are grounds other than those mentioned in section 13(2) or 16 justifying the withdrawal of the registration concerned, the Council or any person with a material interest in the matter may by way of application on notice of motion apply to a court for an order withdrawing the registration of a debt collector.

(2) Any High Court within whose area of jurisdiction the debt collector concerned is resident, employed or carrying on business, shall have jurisdiction in respect of an application in terms of subsection (1).

Return of certificates of registration on withdrawal of registration

18. Whenever the registration of a debt collector is withdrawn under section 13(2), 16 or 17, the debt collector shall forthwith return to the Council the certificate of registration issued to him or her under section 11.

CLAUSE 19

1. On page 12, in line 30, to omit “**Costs**” and to substitute “**Recovery of money**”.
2. On page 12, in line 34, to omit “costs” and to substitute “fees”.
3. On page 12, in line 45, after “of a” to insert “prescribed”.
4. On page 12, in line 46, to omit “determined by the Council”.

CLAUSE 20

1. On page 12, in line 50, to omit “person who exercises the occupation of”.
2. On page 12, in line 50, to omit “for his or her” and to substitute:
who practises for his or her or its

CLAUSE 23

1. On page 14, in line 36, to omit “16(1)” and to substitute “13(1)”.
2. On page 14, in line 38, to omit “16(1)” and to substitute “13(1)”.

NEW CLAUSE

1. That the following be a new Clause:

Offences and penalties

25. Any person who—
(a) contravenes a provision of section 8(1); or
(b) fails to return a certificate of registration in terms of section 18,
shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

CLAUSE 25

1. On page 16, in line 6, to omit “1997” and to substitute “1998”.

CLAUSE 26

1. On page 16, in line 10, to omit “1997” and to substitute “1998”.