

**THE PREPONDERANCE OF THE RECKLESS CONSUMER –
THE NATIONAL CREDIT BILL 2005**

Since the end of the Second World War the increase in the number of credit consumers has been manifest. This has largely been due to rising incomes creating an increase in the equal distribution of wealth to a larger segment of society. Due to this universal benchmark increase in affluence, family unit desires and needs have increased, and in turn increased consumption. The satisfaction level of the family unit has not increased proportionally to the household income and thus it is no longer possible to satisfy demands and needs on this “limited” income, creating, in turn, a desire-based need for credit. The protection of the consumer is, and has in most countries, become a common feature of all legal systems. Although the nature and scope of consumer legislation may differ, such legislation nevertheless exists for the protection of the consumer as consumer contracts can and do give rise to misuse; and for the regulation of the credit provider-credit consumer relationship. The credit consumer is often exploited by long-term contractual agreements the terms of which he or she may not understand, together with alluring methods of payment, which may leave the credit consumer exposed and liable. Some terms may even prove to be dishonest or may be misrepresentations of the truth excluding, *inter alia*, liability, common law warranties and including exorbitant finance charges or forfeiture clauses with drastic rights of cancellation.

The consumer is often helpless against these forces especially in light of the most common standard form contract. Furthermore, because the borrower is usually in a weaker economic position, (this is why he is seeking a loan) it is likely that without protection his position may be exploited. Thus, governments and courts have stepped into the consumer credit realm to assist the consumer in his plight through both legislative enactments and developments in the common law. Most recently the existing South African credit legislation has been repealed to make way for new credit legislation. The National Credit Act No 34 of 2005 signed into law by the President on 24 March 2006 (GG 28619 of 2006-03-15). The Credit Agreements Act 75 of 1980 and the Usury Act 73 of 1968 are no longer part of our law.

- For full article see 2006 (69) THRHR 649