CDE calls for withdrawal of the Business Licensing Bill

Submission to the Department of Small Business Development
November 2025

Executive Summary

South Africa urgently needs reforms that lower barriers to entry for business, support entrepreneurship and help small firms grow. The Business Licensing Bill, 2025 does the opposite.

The Bill proposes a major expansion of control over economic activity. Instead of enabling enterprise development, it introduces new barriers, raises compliance costs and exposes entrepreneurs to intrusive enforcement powers.

CDE's submission explains why the Bill should be withdrawn. In our view it is irrational, unconstitutional and damaging to South Africa's economic prospects.

A Bill with no rational basis

Under South Africa's existing Business Act (1991), licensing rules apply to clearly defined activities – restaurants, mobile food vendors, cinemas and certain health-related or entertainment venues – where health, safety or public nuisance concerns provide a plausible rationale for some licensing. This is the appropriate approach: licensing should be limited to activities that pose real risks or professions requiring specialised competence, such as doctors or financial advisers. For the rest, people should be allowed to engage in all legal commercial activities without having to ask government's permission to do so.

The new Bill abandons this logic. It empowers the Minister of Small Business Development to require licences for any commercial activity falling within the functional areas listed in Schedules 4 and 5 of the Constitution – a list that was not designed for this purpose, but which would create an open-ended system in which virtually any business could be compelled to obtain a licence.

Although the Bill nominally provides for exemptions, the conditions are so onerous that securing an exemption could be harder than securing a licence.

Severe Constitutional concerns

Economic freedom: The Bill imposes a licensing requirement on an undefined, potentially limitless range of businesses. This is a clear limitation on the constitutional right to choose one's trade, occupation or profession, for which the Bill offers no adequate justification.

Privacy and intrusive executive powers: The Bill grants "authorised officers" extraordinary powers to enter business premises, and even private homes, without a warrant. Officers may search, question, confiscate goods and issue compliance notices. These are powers akin to criminal investigations, not the regulation of lawful businesses.

Municipal executive authority: The Bill would oblige provinces and municipalities to adopt uniform licensing laws and amend their by-laws, undermining the constitutionally protected autonomy of these spheres of government. It shifts executive authority upward in ways the Constitution does not permit.

Harm to small, new and informal businesses

Small and informal firms would be hit hardest if this Bill was passed. The Bill enables inspectors to issue fines, confiscate goods and pursue criminal penalties for unlicensed, but otherwise legal activities. These provisions discourage entrepreneurship and threaten urban and township economies. They also create enormous potential for extortion and bribery.

Discriminatory effects on foreign nationals

The drafters of the Bill seem to intend its provisions to limit the scope for foreign nationals to participate in the economy. Indeed, one heading in the Bill reflects an intention (wholly unconstitutional) to designate some areas in which only citizens would be eligible for licences. It is also overwhelmingly likely that the heavy-handed powers granted to municipal inspectors will be disproportionately used against non-citizens, whatever their status in the country.

The Bill should be withdrawn

The Business Licensing Bill expands state power, creates opportunities for corruption, and imposes new burdens on firms at a time when South Africa urgently needs pro-growth reform. CDE recommends that the Bill be withdrawn. Instead, government needs to run a consultative process focused on reducing red tape and enabling small businesses to thrive.

The Business Licensing Bill is not salvageable. This is not a case of tightening definitions, clarifying exemptions, or adjusting processes. The Bill is conceptually unsound, administratively disastrous and economically illiterate.

Cabinet has allowed this Bill to proceed much further than it should have — a worrying sign of how poorly economic policy is being scrutinised. But the real test comes now.

Government should withdraw the Bill before it destroys confidence, before municipalities attempt to enforce it and before already struggling entrepreneurs are told they must pay for the privilege of running a business and creating jobs.

South Africa needs more businesses — not more bureaucrats telling them how to exist.

WRITTEN REPRESENTATIONS ON THE PROPOSED BUSINESS LICENSING BILL, 2025

Centre for Development and Enterprise
20 November 2025

1. Introduction

1.1 The Centre for Development and Enterprise ("CDE") welcomes the opportunity to provide submissions on the Business Licensing Bill, 2025 ("Bill"), published by the Honourable Minister of Small Business Development, Stella Thembisa Ndabeni ("Minister") for public comment on 26 September 2025.

1.2 The CDE is South Africa's leading independent, policy research and advocacy organisation. Since its establishment in 1995, CDE has generated practical policy proposals and convened stakeholders on issues crucial to economic growth, employment and democratic consolidation.

1.3 CDE specialises in the role of business and markets in development. Its research programme includes growth and jobs, enterprise development, investment, the urban economy and regulatory reform. All these areas are directly relevant to the purpose of the Bill which, as we understand it is to reduce red-tape, stimulate formal enterprise and support small and medium enterprises.

1.4 The Bill has direct implications for the ease of doing business, the development of a more dynamic and larger SMME sector and South Africa's economic competitiveness. Accordingly, CDE considers it essential to participate in the legislative process to ensure that the Bill supports inclusive economic growth, job creation and a regulatory environment in which business can thrive.

2. Preliminary remarks

2.1 The CDE is extremely concerned about the implications of the Bill for small businesses, employment and the ultimate stability of the economy. The Bill in its current form would serve only to limit economic activity and to restrict small business growth and development.

2.2 The Bill also raises significant conceptual and legal concerns. Its effect is to unconstitutionally centralise business licensing, unduly interfere with municipalities' executive authority, and unjustifiably limit the right to freedom of trade in section 22 of the Constitution.

2.3 To the extent that the Bill is an attempt to rationalise current business licensing legislation and provide policy coherence and consistency, it fails to do so. The licensing regime that it proposes is incoherent and unimplementable. The only discernible purpose that the Bill could serve is to exclude foreign nationals from the South African economy. This is plainly irrational. It is also a significant overreach by the Honourable Minister outside of the mandate of the Ministry of Small Business Development.

2.4 We submit that the Bill would require a fundamental overhaul to ensure it supports economic growth. Considering that the basis of the Bill is likely unconstitutional, we would urge the Honourable Minister to withdraw the Bill in its entirety and to reconceptualise the Bill through a consultative process.

3. Irrational basis for scope of licensing requirement

3.1 Section 4 of the Bill provides a framework in terms of which the Minister may require all businesses falling "within the scope of the functional areas listed in Schedule 4 to the Constitution" to be licensed.

3.2 Schedule 4 of the Constitution provides for "Functional Areas of Concurrent National and Provincial Legislative Competence" and lists 48 such areas. Schedule 4 is required to be read with section

44 of the Constitution, which authorises Parliament and the National Council of Provinces to pass legislation within one of the listed functional areas. In other words, Schedule 4 reflects areas which may be regulated through national and provincial legislation.

3.3 There is simply no rational basis to adopt Schedule 4 to determine the scope of businesses which may require to be licensed. This is evident from a plain reading of the Schedule, which includes, among other things: "Administration of indigenous forests", "Animal control and diseases", "Disaster management", "Language policy" and "Population development". These cannot translate to sectors in which businesses operate and cannot form the basis of a business licensing regime.

3.4 To make matters worse, section 28(1) of the Bill further provides that "A provincial government must [emphasis added] enact legislation on business licensing in relation to the functional areas listed in Schedules 4 and 5 to the Constitution and in relation to street trading as a functional area listed in Schedule 5 to the Constitution". This provision firstly interferes with provincial legislatures' determination regarding legislation within its exclusive competence, and secondly extends the scope of business licensing even further to include, among other things: the display of advertising, cleansing, liquor licensing, facilities for the care/accommodation and burial of animals, fences and fencing, markets, refuse removal, street trading, traffic and parking. Section 29 requires local governments to amend by-laws to make them consistent with any licensing rules imposed by national and provincial legislation.

3.5 The CDE considers these provisions to be unconstitutional breaches of the separation of powers between (i) the legislature and the executive and (ii) the national, provincial and local spheres of government. We discuss this in further detail below.

3.6 In the first instance, however, the effect of incorporating Schedules 4 and 5 of the Constitution is that all economic activity may be required to be licensed. If this is the purpose of the Bill, then this must be explicitly stated and justified in terms of public policy and under section 22 of the Constitution.

3.7 The CDE considers that licensing requirements should be limited to cases where they clearly serve the public interest. For example, banks operate with public backstops and are subject to strict fiduciary and regulatory standards to ensure that risks are not transferred to taxpayers. This justifies a licensing process. Similarly, the complexities involved in transactions for fixed property, and the need to manage a range of risks associated with this, mean that estate agents and agencies need to meet certain conditions to operate safely. This, again, necessitates a licensing procedure which affirms that they meet those standards. Professionals such as financial advisors, lawyers, doctors and accountants, all need to pass tests and obtain licences so that the public can have a measure of confidence that they know what they are doing.

3.8 The Business Act of 1991, which the Bill is intended to repeal and replace, similarly appears to have followed at least a discernible logic in determining types of businesses required to be licensed to include:

3.8.1 Businesses that sell/supply meals of perishable foodstuffs;

3.8.2 Preparing and selling food from mobile kitchens, food stalls, etc; and

3.8.3 Certain classes of health/entertainment/leisure businesses such as Turkish baths, massage parlours, escort agencies, electronic games rooms, pool dens, discotheques, and cinemas.

3.9 While the basis for the licensing categories in the Business Act is not spelled out, the categories appear to stem from public health or public policy concerns which could at least arguably be rational. For example, it might be desirable to ensure that restaurants and mobile food businesses can and do store their food in working cold cases, that their cooking equipment is safe, and their standards of hygiene are high.

3.10 The 2025 Bill makes no such attempt at rationality. There are almost no limits placed on the nature of the business activities that might be designated as requiring a licence from a licensing authority. Instead, the list of such activities is almost completely open-ended: if the Bill were to be passed, the Minister could designate any form of business activity that has any relation to any of the functions of national government as set out in Schedule 4 of the Constitution, as requiring a business licence.

3.11 The Bill applies to businesses whose licensing needs are neither defined nor justified, with potentially broad scope that raises serious questions about its rationale, proportionality, and potential regulatory overreach.

3.12 To the extent that the Bill provides for exemptions, for which businesses would have to apply in writing and through as yet unspecified channels, the business would be required to demonstrate that they are "low risk", have a "a proven track record of compliance with relevant regulations", "contribute significantly to local economic development", are a PBO, or are a start-up or small enterprise that requires temporary relief from licensing requirements to establish itself (provided it meets specific conditions set by the licensing authority).

3.13 Section 5(1) and 5(2) also implies a high bar for exemptions for sectors:

3.14 "(1) The Minister, in consultation with the Ministers responsible for trade, industry and competition, employment and labour, cooperative governance and traditional affairs, home affairs, and provincial and local government may, from time to time, exempt certain industries or sectors from the requirement to obtain a business license, either— (a) upon application, in writing, by an industry association, national or provincial government department; or (b) after conducting a thorough investigation and on any reasonable and justifiable grounds, out of his or her own initiative.

3.15 (2) Before granting an exemption in terms of subsection (1), the Minister must publish in the Gazette a notice of intention to exempt the industry or sector and invite public comments to be submitted within a period of not less than 60 days from the date of publication of the notice".

3.16 A further indicator of the intention to subject most businesses to licensing requirements can be seen from the fact that, while the public has 60 days to offer comments on the Minister's proposal to exempt some industries from licensing requirements to maximise the opportunity to object, the Bill provides only 30 days for consideration of draft regulations or directives in terms of section 32.

3.17 Given the above, it would seem that the process that an individual business must follow in applying for and being granted an exemption is likely to be as onerous as applying for the licence itself. Indeed, to the extent that proof is required to demonstrate some of these conditions, it may be far harder to get an exemption than it is to get a licence. This, in the first instance, bolsters the position that the purpose of the Bill is in fact to require all economic activity to be licensed; and secondly underscores the irrationality of the Bill in that it will serve to restrict all economic activity, even that which should be exempt from the scope of the Bill.

4. Unjustifiable limitation of section 22 of the Constitution

4.1 The CDE considers the Bill to unjustifiably limit the right, under section 22 of the Constitution, of every citizen "to choose their trade, occupation or profession freely." The Constitutional Court in Affordable Medicines Trust v Minister of Health 2006 (3) SA 247 (CC) described this right as "both repudiating past exclusionary practices and affirming the entitlements appropriate for our new open and democratic society. Thus in light of our history of job reservation, restrictions on employment imposed by pass laws and the exclusion of women from many occupations, to mention just a few of the arbitrary laws and practices used to maintain privilege, it is understandable why this aspect of economic activity was singled out for constitutional protection" (para 58).

4.2 While section 22 permits for the regulation of practice of trades, occupations and professions, such regulation cannot unjustifiably or unreasonably limit the right to choose and practice such trade, occupation or profession. In each instance where such a limitation occurs, it must be justifiable.

4.3 A licensing requirement is self-evidently a limitation on the right to choose one's trade, occupation or profession freely. It imposes conditions on the right and requires administrative processes to be undertaken before one can exercise the right, including payments of administrative and licence fees. It also raises the prospect that the application will be refused, giving rise to an ever more severe limitation. These limitations will only be constitutionally justifiable where the limitations serve a legitimate purpose and, depending on the nature and extent of the limitations, where there are no less restrictive means to achieve such purpose.

5. Unjustifiable limitation of section 14 of the Constitution

5.1 The Bill proposes extensive powers to authorised officers to conduct warrantless search and seizure operations on the mere suspicion that a business operates without a business licence or in contravention of its conditions. These include powers to enter private dwellings without a warrant if the authorised officer believe that a search warrant would have been issued to them if they applied for it and they believe that the delay required to obtain the warrant would defeat the purpose of the search. This is identical language to the language of the Criminal Procedure Act of 1977, which empowers police officers to search a private dwelling without a warrant, where such officers may be investigating something as serious as a murder, grand corruption or drug-dealing, and not failing to apply for a business license. This plainly is a disproportionate power which unjustifiably limits section 14 of the Constitution.

5.2 Section 14 provides that:

"everyone has the right to privacy, which includes the right not to have—

(a) their person or home searched;

(b) their property searched;

(c) their possessions seized; or

(d) the privacy of their communications infringed".

5.3 The right to privacy is a cornerstone of human dignity and personal autonomy, and any statutory encroachment upon it must be strictly justified. The Bill's limitation of the right to privacy cannot be justified by purported need for business licensing – particularly since the Bill fails to clearly define or demonstrate the necessity for such a licensing regime save to mention that the current regime contradicts principles of cooperative governance.

5.4 To permit authorised officers, who are not trained police officers, to conduct warrantless search and seizure operations on the mere suspicion that a business operates without a business licence or in contravention of its conditions, would hollow out the constitutional right to privacy and undermine human dignity.

6. The Bill does not serve a legitimate purpose

6.1 As prefaced above, the purpose of the Bill appears to be the expansion of licensing requirements to all economic activity across South Africa and the exclusion of foreign nationals from the economy. The CDE does not consider either of these to be legitimate government purposes, and neither of these has been explicitly stated as government policy positions.

6.2 Licences under the Bill are not issued to the business; they are issued to a "licence holder" which is a natural person who is "in actual and effective control of the business or a duly authorised representative." This violates a critical distinction in law between the business (which has its own legal personhood) and its owners (who may be natural persons or other legal persons). In the Bill, the licence is not going to be issued to the business, but to a natural person who is in control of the business. Indeed, the Bill contemplates that on the death of a licence holder, the business might well have to reapply for the license.

6.3 This issue is significant because the Bill appears to be heavily influenced by concerns relating to non-citizens who may wish to obtain business licences. This focus is so pronounced that section 1 of the Bill defines "non-citizen" to include juristic persons who do not have citizenship even though South African law confines the concept of citizenship exclusively to natural persons. This represents a fundamental legal error and raises serious questions about the quality of legal scrutiny the Bill has undergone prior to publication.

6.4 The Bill provides that the only non-citizens who can obtain a business licence are those who hold either a valid visa or permit authorising him or her to operate a business or an asylum-seekers visa or refugee visa. Licences issued to qualifying non-citizens are valid only as long as their visas are valid.

6.5 These provisions also need to be read in light of section 16 of the Bill which is headed "Designated trading areas for citizens and small enterprises" (emphasis added). The section itself does not make provision for designating some areas for the citizens – it deals only with designation of areas for exclusive operation of small businesses – and it is thus difficult to understand what the reference to "citizens" is intended to achieve. The implication is probably a late excision from the Bill after advice that such a provision would not pass constitutional scrutiny. While such exclusion is warranted and welcomed, it exposes the underlying purpose of the Bill and there are still numerous other provisions that serve to exclude non-citizens. For example:

6.5.1 some licence applicants can be treated preferentially (e.g. lower rates, prioritised application processes, etc);

6.5.2 licence applications can be rejected if the applicant cannot show that they do not have prior criminal convictions (which could be read to permit licensing authorities to refuse applications unless criminal records can be produced from applicants' country of origin);

6.5.3 licences could also be withheld if the applicant is deemed by the authority to have a documented history of making "material misrepresentations", as may very well be the case for non-citizens who arrived in SA irregularly.

6.6 Even without any further formal forms of discrimination against non-citizens, there is a real prospect of inspectors using their powers more vigorously against foreigners.

6.7 The Bill disproportionately affects foreign-owned businesses and may even be designed to make it more difficult for foreigners to operate businesses in South Africa. It creates instruments through which foreigners attempting to operate businesses in South Africa may be driven out of business through harassment, administrative penalties, criminal prosecution, and the confiscation of property needed to operate a business. This raises serious concerns about the Bill's alignment with constitutional principles of equality and non-discrimination.

7. Implications of operating a business without a licence

7.1 The Bill makes clear that businesses required to obtain a licence but operating without one will be liable for considerable penalties. These include, upon conviction, a fine or jail sentence of no more than six months for a first offence, twelve months for a second offence, and 24 months for a third offence. These penalties apply to otherwise-legal business solely on the basis that they do not have a business licence.

7.2 Authorised officers are also able to issue compliance notices and to impose administrative fines on businesses that fail to comply. Fines are R500 for a first failure to comply, R5 000 for the second and R10 000 for the third and subsequent failures. This is very much a "licence" for corruption on the part of inspectors (the scope of which is widened by their powers to confiscate anything they reasonably believe to be linked to unlicensed business activity—see below).

7.3 It is important to note that under the Companies Act, the Companies for Intellectual Property Commission (CIPC), which registers business and to which businesses must submit a range of documentation, is not empowered to issue administrative fines to non-compliant business and must apply to court to do so. This reflects an appropriate division of powers so that the inspector is not investigator, prosecutor, or judge in such matters. It is frankly bizarre to consider that inspectors appointed by municipalities to inspect otherwise-legal businesses should not have similar checks and balances on their enforcement powers.

7.4 Finally, as prefaced above, section 21(1) of the Bill provides that, having entered the premises in which unlicensed (but otherwise legal) business is being conducted, an inspector "who reasonably suspects that a business is being conducted without a business license, or in contravention of the conditions on their business license, may, without a warrant, confiscate and remove any goods from the premises of a business that, on reasonable grounds, are being utilised in a manner that contravenes this Act or any relevant by-law or legislation that relates to business licenses" (emphasis added).

7.5 The result of these provisions is that:

7.5.1 businesses will be subject to inspections by officers empowered to enter all premises (including private dwellings) if they reasonably suspect that a business that does not have a licence is operating from it;

7.5.2 officers can issue compliance notices and, if a business fails to comply with them, officers can impose an escalating administrative penalty, and can also confiscate anything on the property that they reasonably believe is being used to conduct unlicensed business; and

7.5.3 if a business fails to comply with all of the above, the person responsible can be charged, fined and sent to prison.

7.6 All of the above, it should be reiterated, applies to business activities that, apart from being unlicensed, would be perfectly legal. The penalties are clearly disproportionate, irrational and unconstitutional.

8. Encroachment on municipal executive authority

8.1 In addition to the concerns for traders outlined above, the CDE considers the Bill to unjustifiably encroach on municipalities' executive authority.

8.2 Trading regulations are a local government matter over which municipalities hold executive authority in terms of section 156(1) of the Constitution. Parliament's authority to legislate business licensing is derived from section 155(6)(a) and (7) of the Constitution read with Schedule 4, Part B, which permits legislation on trading regulations "to see to the effective performance by municipalities of their functions".

8.3 For Parliament to exercise its authority rationally, its trading regulations cannot "usurp the executive authority of municipalities in respect of, or, infringe their right to administer, matters that municipalities are entitled to administer, or matters over which municipalities have executive authority in terms of section 156" (Organisation Undoing Tax Abuse v Minister of Transport 2024 (1) SA 21 (CC) para 36). A purposive interpretation of the Part B Schedule 4 requires that the different spheres of government must be able to exercise their powers "fully and effectively" (City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal (GDT) 2010 (6) SA 182 (CC) para 49). The national and provincial spheres of government cannot, by legislation, give themselves the power to exercise executive municipal powers or the right to administer municipal matters (GDT, para 59). Several aspects of the Bill point to the national and provincial governments' usurpation of these powers:

8.3.1 That the Bill envisages business licensing being coordinated by a National Inter-Departmental Co-ordination Committee on business licensing and economic regulation (section 11(2)).

8.3.2 That the Bill envisages the establishment of Provincial Inter-Departmental and Municipal Co-ordinating Committees on business licensing, led by Members of the Executive Council for each province, and consisting of "one person, in full-time employment, from the local economic development office of each municipality".

8.3.3 That a licensing authority is defined as either a municipality "or a provincial authority authorised to issue licences in terms of provincial legislation"; and

8.3.4 That the principle of "municipal differentiation" is required to ensure that the national and provincial governments take into consideration the particular circumstances of each municipality. It is submitted that the purpose of areas of municipal executive authority is precisely that municipalities should be able to self-govern in those areas.

8.4 The inclusion of "trading regulations" in Part B of Schedule 4 of the Constitution is recognition that municipalities hold exclusive executive authority over trading regulations. This must be interpreted as including more than simply issuing licences, in which case the Schedule would have been expected to read "trading licences" in the same manner in which liquor, dog and vehicle licences are specifically provided for elsewhere in Schedules 4 and 5.

8.5 In City of Johannesburg Metropolitan Municipality v Chairman of the National Building Regulations Review Board 2018 (5) SA 1 (CC), the Constitutional Court cautioned against the national and provincial spheres interfering in municipal executive authority over building regulations, listed in Part B Schedule 4 of the Constitution, including by passing legislation permitting for such interference. It held that the exercise of legislative and executive authority by these spheres is limited to capacitating municipalities to manage their own affairs and regulating how this must be done (para 34).

8.6 The Bill provides for extensive executive involvement from national and provincial government which clearly goes beyond what is envisaged in the Constitution, to the detriment of traders and municipalities.

9. Concluding remarks

9.1 While the Bill purports to promote compliance, consumer protection, and orderly economic activity, it appears to be premised on unconstitutional bases and thus fails to establish the clear principles and framework necessary to guide its implementation.

9.2 On the one hand, the Bill disempowers municipalities from determining the implementation of their business licensing regimes; on the other, it confers overly broad powers to municipalities and municipal employees to impose penalties. It does so without adequate procedural safeguards, proportionality, or accountability mechanisms, risking arbitrary enforcement and exposing small and informal businesses, the very actors most in need of regulatory support, to heavy handed administration and potential abuse of power. Without a principled and transparent framework, the Bill is likely to generate uncertainty, foster corruption, and erode confidence in the regulatory system.

9.3 The Bill should be withdrawn and wholly redrafted following a stakeholder consultation process to ensure constitutional compliance.

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