

A BILL

ENTITLED

AN ACT to Amend the Consumer Protection Act.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Consumer Protection (Amendment) Act, 2012, and shall be read and construed as one with the Consumer Protection Act (hereinafter referred to as the principal Act) and all amendments thereto, and shall come into operation on a day to be appointed by the Minister by notice in the *Gazette*.

Short title,
construction
and com-
mencement.

Amendment
of section 2 of
principal Act.

2. Section 2 of the principal Act is amended by—

- (a) inserting next after the definition of “business” the following definition—

“Commission” means the Consumer Affairs Commission established under section 5;”;

- (b) deleting the definition of “provider” and substituting therefor the following—

“provider” in relation to—

- (a) any goods, means a person who sells such goods;

- (b) any services or facilities, means a person who provides such services or facilities, whether on a regular basis or as a single transaction;

“services” means the supply to a consumer of anything for a consideration which is not a supply of goods, other than the rendering of any service under a contract of personal services or employment services;

“Tribunal” means the Consumer Protection Tribunal established under section 44A.”.

Amendment
of section 6 of
principal Act.

3. Section 6 of the principal Act is amended—

- (a) in subsection (1), by—

- (i) re-lettering paragraphs (c) to (h) as paragraphs (e) to (j);

- (ii) inserting next after paragraph (b) the following as paragraphs (c) and (d)—

“(c) keep proper records of all consumer complaints, all actions taken in relation to such complaints and the results of those actions and those records shall be—

- (i) appropriately indexed and categorized to allow for ease of access and reproduction;

- (ii) maintained in a condition appropriate for public inspection;
 - (d) as it thinks necessary and acting on its own initiative, institute and carry on legal proceedings against a provider for any contravention of this Act;” and
- (b) deleting subsection (3) and substituting therefor the following—

“ (3) The Commission—

- (a) may investigate on its own initiative, any breach by a provider of any provision of this Act; and
- (b) shall investigate any action alleged, in a complaint to the Commission, to have been taken by a provider, which adversely affects the complainant or is in contravention of any provision of this Act in the manner provided under sections 7, 8, 9, 10, 11 and 12.”.

4. Section 7 of the principal Act is amended by deleting subsection (4) and substituting therefor the following—

Amendment
of section 7 of
principal Act.

“ (4) The Commission may—

- (a) in its own name institute legal proceedings under this Act on behalf of the complainant; or
- (b) provide legal support and assistance to a complainant under this Act.”.

5. Section 21 of the principal Act is amended—

Amendment
of section 21
of principal
Act.

- (a) in subsection (2) by deleting the words “(local or foreign)” and substituting therefore the words “(whether the manufacturer operates from within Jamaica or outside of Jamaica)”;

(b) by inserting next after subsection (6), the following as subsections (7) and (8)—

“ (7) Where a provider is in breach of a contract with a consumer, the consumer may recover damages for any loss suffered as a result of the breach, that was reasonably foreseeable at the time of the contract.

(8) A provider who fails to issue a warranty or extend a manufacturer’s warranty (whether the manufacturer operates from within Jamaica or outside of Jamaica) in accordance with subsections (1) and (2), commits an offence and shall be liable on summary conviction before a Resident Magistrate, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.”.

Amendment
of section 24
of principal
Act.

6. Section 24 of the principal Act is amended by deleting subsection (2) and substituting therefor the following—

“ (2) A provider to whom goods are returned pursuant to subsection (1) shall, after taking such time as is reasonably required to verify the matters referred to in subsections (1) and (3), offer to the consumer in exchange for the returned goods, monetary compensation to the value of the goods or such other amount as may be agreed between the consumer and provider.”.

Amendment
of section 30
of principal
Act.

7. Section 30 of the principal Act is amended in subsection (2), by inserting immediately after the words “summary conviction” the words “before a Resident Magistrate”.

Amendment
of section 32
of principal
Act.

8. Section 32 of the principal Act is amended by renumbering subsection (3) as subsection (4) and inserting next after subsection (2), the following as subsection (3)—

“ (3) The specified price referred to in subsections (1) and (2), shall include all components of the total price payable by the consumer in respect of the goods or services, including the applicable general consumption tax and any other taxes, duties or charges.”.

9. The principal Act is amended by inserting next after section 32 the following as section 32A—

Insertion of
new section
32A in
principal Act.

“ Advertising standards. 32A.—(1) The provider shall—

- (a) ensure that every contract of sale and every advertisement, in relation to goods or services offered by that provider—
 - (i) is conspicuous, legible and in simple and easily understandable language; and
 - (ii) sets out the terms and conditions of the contract or advertisement, as the case may be; and
- (b) take reasonable steps to bring those terms and conditions to the attention of its consumers.

(2) For the purposes of subsection (1) (a), if there is doubt as to the meaning of a term or condition of a contract, the interpretation that is most favourable to the consumer shall prevail.”.

10. Section 33 of the principal Act is amended by deleting subsection (2) and substituting therefor the following—

Amendment
of section 33
of principal
Act.

“ (2) Where a provider fails without reasonable cause to meet the advertised delivery date and the consumer elects not to accept the goods, the provider shall refund to the consumer—

- (a) all monies paid plus interest with respect to the period beginning with the date of the deposit of the amount and ending on the date of its refund; or
- (b) where the provider has withheld a portion of the monies paid by the consumer, claiming an administrative, restocking or any other fee charged,

all such monies withheld, including interest accrued with respect to the period beginning with the date of the deposit of the amount and ending on the date of its refund,

at a rate of fifteen percent per annum or such other rate as the Minister may, from time to time, by order prescribe.”.

Amendment of section 43 of principal Act.

11. The principal Act is amended by inserting immediately after section 43, the following—

“Part VII. Settlements of Disputes”

Amendment of section 44 of principal Act.

12. Section 44 of the principal Act is amended by—

- (a) renumbering the section as subsection (1) of the section; and
- (b) inserting next after subsection (1), as renumbered, the following as subsection (2)—

“ (2) The parties may refer matters that were not settled through mediation to the Tribunal.”.

Insertion of new sections 44A, 44B, 44C, 44D, 44E, 44F and 44G in principal Act.

13. The principal Act is amended by inserting next after section 44, the following as sections 44A, 44B, 44C, 44D, 44E, 44F and 44G—

“Establishment of Tribunal.

44A.—(1) There shall be established for the purposes of this Act a body to be called the Consumer Protection Tribunal.

Third Schedule.

(2) The provisions of the Third Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

Functions of Tribunal.

44B.—(1) The Tribunal shall hear and determine matters referred to it pursuant to section 44 and for that purpose may exercise the functions set out in subsections (2) and (3).

(2) The Tribunal may—

- (a) call and examine witnesses;
- (b) call for the production of, and examine documents and articles;

- (c) require that any document or article submitted to the Commission be verified by affidavit;
- (d) make orders—
 - (i) declaring certain transactions to be in breach of the provisions of this Act;
 - (ii) prohibiting the withholding of supplies or the threat thereof;
 - (iii) suspending or modifying any terms or conditions in an agreement;
 - (iv) prohibiting the attachment of any extraneous conditions to any transaction;
 - (v) requiring the publication of a price list;
 - (vi) requiring the payment of refund and interest where appropriate;
 - (vii) requiring the delivery of goods and services; and
 - (viii) in relation to any other matter or measures as it deems appropriate or necessary.

(3) In all proceedings, any paper, book, record or other document produced to the Tribunal pursuant to this section, shall be received as *prima facie* evidence of the truth of the statements contained therein.

Failure to
comply with a
summons.

44C. Any person who has been served with a summons—

- (a) to appear as a witness before the Tribunal; or

- (b) to produce a document or articles, and who, without reasonable excuse, fails to comply with the summons, commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Failure to answer questions.

44D. Any person who appears as a witness before the Tribunal and who, without reasonable excuse, refuses or fails to answer a question that he is required to answer by the presiding member at the proceeding, commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

False or misleading evidence.

44E. Any person who appears as a witness before the Tribunal and gives evidence that, to his knowledge, is false or misleading commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Contempt of Tribunal.

44F. Any person who—

- (a) insults a member of the Tribunal in, or in relation to, the exercise of his powers or functions as a member;
- (b) disrupts the proceedings of the Tribunal;

- (c) creates a disturbance or takes part in creating a disturbance in or near a place where the Tribunal is sitting; or
- (d) does any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of the court,

commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Failure to
comply with
an Order of
the Tribunal.

44G. Any person who fails to comply with an order of the Tribunal, commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.”.

14. Section 48 of the principal Act is amended by—

- (a) renumbering subsections (2) and (3) as subsections (3) and (4); and
- (b) inserting the following as subsection (2)—

“ (2) Subject to subsection (1), service providers offering a single transaction shall be exempt from the requirement of registration.”.

Amendment
of section 48
of principal
Act.

Insertion of
new Third
Schedule in
principal Act.

15. The principal Act is amended by inserting next after the Second Schedule the following as the Third Schedule—

“ THIRD SCHEDULE (Section 44A)

Consumer Protection Tribunal

Appointment
of members.

1.—(1) The Consumer Protection Tribunal shall consist of not less than three and not more than five members appointed by the Minister in accordance with subparagraph (2).

(2) Members of the Tribunal shall be selected from among persons appearing to the Minister to be suitably qualified, knowledgeable and experienced in matters relating to—

- (a) law;
- (b) economics;
- (c) consumer affairs;
- (d) telecommunications;
- (e) information technology;
- (f) business;
- (g) accounting; or
- (h) public administration.

Qualification
for
appointment.

2. No person shall be appointed as a member of the Tribunal if that person—

- (a) is not ordinarily resident in Jamaica;
- (b) is certified under section 6 of the Mental Health Act to be suffering from a mental disorder or is otherwise incapacitated by physical or mental illness which would render him incapable of properly fulfilling his functions as a member of the Tribunal;
- (c) is an undischarged bankrupt;
- (d) is convicted of an offence involving fraud, dishonesty or moral turpitude or is convicted and sentenced to a term of imprisonment in Jamaica or elsewhere;

- (e) has been removed from an office of trust on account of his misconduct or criminal liability; or
- (f) is or has been engaged in activities which could reasonably be considered prejudicial to the interests of the Tribunal.

Chairman and deputy chairman. 3. The Minister shall appoint a chairman and a deputy chairman from among the members of the Tribunal and who shall be persons who possess the qualifications to hold office as a Resident Magistrate.

Temporary appointment. 4. If the chairman or any other member of the Tribunal is absent or unable to act, the Minister may appoint another person to act as chairman or such member.

Constitution of Tribunal for exercise of powers. 5.—(1) The chairman, when present shall preside over every sitting of the Tribunal or, in the case of his absence or inability to so preside, the deputy chairman shall preside, or in case of the absence or inability to act of the chairman and deputy chairman, the other members of the Tribunal may elect another member to act temporarily as chairman for that sitting.

(2) The decisions of the Tribunal shall be by a majority of votes of the members and, in addition to an original vote, the chairman or other person presiding shall have a casting vote in any case in which the voting is equal.

(3) Subject to sub-paragraph (4), the quorum for a sitting of the Tribunal is three.

(4) For the hearing of a matter under this Act, the Tribunal may consist of one member sitting alone if the parties to the hearing agree.

Office of member not public office. 6. The office of the chairman or other members of the Tribunal shall not be a public office for the purpose of Chapter V of the Constitution of Jamaica.

Publication of membership. 7. The names of the members of the Tribunal as first constituted and every change in membership thereof shall be published in the *Gazette*.

Tenure of Office. 8.—(1) The appointment of every member of the Tribunal shall be evidenced by instrument in writing and shall be for a period not exceeding three years.

(2) Every member of the Tribunal shall be eligible for re-appointment.

Procedure. 9. The Tribunal shall sit at such times as may be necessary or expedient for the transaction of business and for the consideration of matters under inquiry and such sittings shall be held at such places and times and on such days as the Tribunal may determine.

Tribunal may regulate its proceedings. 10. Subject to the provisions of this Schedule, the Tribunal shall have power to regulate its own proceedings.

Resignation. 11.—(1) A member of the Tribunal other than the chairman may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman and, from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Tribunal.

(2) The chairman may, at any time, resign his office by instrument in writing addressed to the Minister and such resignation shall take effect on receipt of same by the Minister.

Revocation of appointment. 12. The Minister may, at any time, revoke the appointment of the chairman or any other member of the Tribunal.

Filling of vacancy. 13. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member in the manner in which the previous member was appointed and the member so appointed shall, subject to the provisions of this Schedule hold office for the remainder of the period for which the previous member was appointed.

Remuneration of members. 14. There shall be paid to the chairman and other members of the Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister responsible for finance may determine.

Disclosure of interest. 15. A member who is directly or indirectly interested in any matter which is being dealt with or to be dealt with by the Tribunal, shall disclose his interest at the first meeting of the Tribunal concerning the matter; and shall not take part in any deliberation or decision of the Tribunal with respect to the matter.

Protection of members. 16. No action, suit, prosecution or other proceeding shall be brought or instituted personally against any member of the Tribunal, in respect of an act done *bona fide* in pursuance or execution or intended execution of the provisions of this Act.”.

Passed in the Honourable House of Representatives this 16th day of October, 2012 with eight (8) amendments.

MICHAEL PEART
Speaker.

A BILL

ENTITLED

AN ACT to Amend the Consumer Protection
Act.

As passed in the Honourable House of Representatives.

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SECTIONS 2, 6 and 7 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

2.—(1) In this Act unless the context otherwise requires—

“acquire” in relation to—

- (a) goods, includes obtaining by way of gift, purchase, or exchange, the taking on lease, hire or hire purchase; and
- (b) services, includes accepting the provision of those services;

... ..

“business” includes a professional practice or any other undertaking that is carried on for gain or reward or in the course of which goods or services are supplied otherwise than for free of charge;

... ..

“provider” in relation to—

- (a) any goods, means any person who sells goods;
- (b) any services or facilities, means any person who provides services or facilities.

... ..

6.—(1) Subject to subsection (3), the Commission shall—

- (a)
- (c) promote the development of organizations formed for the protection of the consumer and ensure that they fulfill the criteria listed in section 4;
- (d) collect, compile and analyze information in relation to any trade or business;
- (e) provide information to consumers on their rights as consumers and any other form of consumer education;
- (f) implement education programmes for the benefit of consumers, suppliers and service providers;
- (g) seek to resolve disagreements between consumers and providers; and
- (h) carry out such other functions as the Minister may assign to the Commission from time to time.

... ..

(3) The Commission shall investigate, in the manner provided in sections 7 to 12, any action alleged to have been taken by a provider to the disadvantage of the complainant.

7.—(1)

(4) The Commission may, upon the request of a complainant as specified in subsection (2), represent that complainant in the event that litigation is contemplated.

SECTIONS 21 and 24 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

21.—(1)

(2) Any warranty given by the manufacturer (whether local or foreign) and attached to any goods or services sold or provided, as the case may be, in Jamaica shall be deemed to extend to the provider in Jamaica who shall be liable to the consumer in relation to such warranty.

... ..

(6) In the absence of an explicit warranty which shall be at the discretion of the provider, an implied warranty of six months on parts and labour shall, subject to the standard conditions of warranties, attach to the transaction.

24.—(1)

(2) The provider shall immediately offer to the consumer, in exchange for the returned goods, monetary compensation to the value of the goods or such other amount as may be agreed between the consumer and provider.

... ..

SECTIONS 30, 32 and 33 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

30.—(1)

(2) Any person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment.

... ..

32.—(1) No person shall in the course of trade or business, advertise for supply at a specified price, goods or services which—

- (a) he does not intend to offer for supply; or
- (b) he does not have reasonable grounds for believing can be supplied by him at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

(2) Any person who has advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

(3) Any person who contravenes subsection (1), commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding thirty days.

33.—(1)

(2) Where a provider fails without reasonable cause to meet the advertised delivery date the provider shall refund to the consumer all moneys paid, plus interest on any amount not refunded, as respects the period beginning with the date of deposit of the amount and ending on the date of its refund, at an annual rate ten percentage points above the Treasury Bill rate applicable at the former date.

SECTION 44 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

44. The parties may attempt to settle their disagreements through mediation by the Commission before taking the matter to court.

SECTION 48 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

48.—(1) Subject to subsection (3), all providers acting individually or collectively, and offering goods or services to consumers for purchase, shall be appropriately registered as companies, partnerships, co-operatives, sole proprietorships or informal commercial operators.

(2) The instruments of registration and licence where applicable, or any official number or identification mark issued by the relevant authorities

shall be conspicuously displayed by the provider for viewing by the consumer.

(3) A provider who fails to comply with the provisions of this section commits an offence, and shall upon summary conviction before a Resident Magistrate, be liable—

- (a) in the case of an offence under subsection (1), to a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding three months, and
- (b) in the case of an offence under subsection (2), to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding thirty days.

