

JAMAICA

No. – 2005

I assent,

[L.S.]

Governor-General.

An Act to Provide for the promotion and protection of consumer interests, in relation to the supply of goods and the provision of services in order to ensure protection of life, health and safety of consumers and others, the establishment of a Consumer Affairs Commission and for connected purposes.

[]

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 Act, 2005, and shall come into operation on a date to be appointed by the Minister by notice published in the *Gazette*. Short title.

PART I. *Interpretation*

2.—(1) In this Act unless the context otherwise requires— Inter-pretation.
“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;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or services and “advertise” shall be construed accordingly;

“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;

“consumer” in relation to—

(a) any goods, means—

(i) any person who acquires or wishes to acquire goods for his own private use or consumption; and

(ii) a commercial undertaking that purchases consumer goods;

(b) any services or facilities, means any person who employs or wishes to be provided with the services or facilities; and

(c) any accommodation, means any person who wishes to occupy the accommodation;

“document” includes, in addition to a document in writing—

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track or other data (not being visual images) which are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; or

(d) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

“goods” includes all kinds of property other than real property, securities, money or choses in action;

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;

“negligence” means the breach—

- (a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care to exercise reasonable skill in the performance of the contract;
- (b) of any common law duty to take reasonable care or exercise reasonable skill in the performance of a contract; or
- (c) of the common duty of care imposed by the Occupiers’ Liability Act; and

“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.

(2) In this Act a reference to—

- (a) the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods, in pursuance of a supply of the goods;
- (b) the supply or acquisition of goods or services includes a reference to an agreement to supply or acquire goods or services;
- (c) the supply or acquisition of services includes a reference to the supply or acquisition of goods together with other property or services; and

- (d) the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services or both.

Application. **3.**—(1) Subject to subsection (2), this Act shall apply to all persons involved in trade or business whether through the purchasing or vending of goods or services.

(2) The Minister may by order, subject to affirmative resolution, exempt categories of trade or business from the application of this Act.

Criteria for organizations purporting to provide services for protection of consumers. **4.** Any organization purporting to provide services for the protection of consumers shall be a non-profit organization the purpose of which is to—

- (a) promote and protect consumer rights;
- (b) represent the collective interests of consumers before judicial or administrative bodies;
- (c) represent consumers' interests to government and persons engaged in the business of producing, supplying or distributing goods or providing services; and
- (d) collect, process and disseminate objective information for the benefit of consumers.

PART II. *Establishment and Functions of the Commission*

Establishment of Consumer Affairs Commission. **5.**—(1) There shall be established for the purposes of this Act a body to be called the Consumer Affairs Commission (hereinafter in this Act referred to as the Commission), which shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

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

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

- (a) carry out, at the request of a consumer who has been adversely affected, such investigations in relation to the sale

of goods or the provision of services as will enable it to determine whether the goods were sold or the services were provided in contravention of this Act and thereafter to make such report and recommendations in connection therewith as it thinks fit to the Minister;

- (b) carry out, on its own initiative, such other investigations in relation to the availability of goods of any class or description as it thinks fit and make such report and recommendations as it thinks fit to the Minister;
- (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.

(2) Subject to the provisions of this Act, the Commission may, for the purpose of exercising or discharging any of its functions under this Act, do anything and enter into any transaction which, in the opinion of the Commission, is necessary to ensure the proper exercise or discharge of its functions.

(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.

PART III. *Administration*

Complaints
made to the
Commission.

7.—(1) A complaint to the Commission may be made by any person or body of persons, whether incorporated or not, who claims to have suffered a disadvantage in relation to the acquisition of goods or services.

(2) Where the complainant—

- (a) is a minor, the complaint may be made by his parent or guardian; or
- (b) is unable to act for himself by reason of infirmity or any other cause or has died, the complaint may be made by a member of his family or his personal representative.

(3) Every complaint to the Commission may be made orally or in writing.

(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.

(5) Where litigation is contemplated by the complainant in relation to a complaint that was not in writing, the Commission shall obtain from the complainant a written version of the complaint signed by the complainant.

Discretion
not to
conduct
investigation.

8.—(1) The Commission may, in its absolute discretion, determine whether to undertake or continue an investigation under this act and in particular, but without prejudice to the generality of the foregoing, may refuse to undertake or continue any investigation if it is of the opinion that—

- (a) the subject matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or not made in good faith;
- (c) the complainant has delayed for too long the making of his complaint;
- (d) the complainant does not have a sufficient interest in the subject matter of the complaint;

- (e) the subject matter of the complaint should more appropriately be dealt with by another body or another forum; or
- (f) having regard to all the circumstances of the case—
 - (i) further investigation is not necessary; or
 - (ii) no investigation is possible or necessary.

(2) Where the Commission decides not to undertake or continue the investigation of a complaint, it shall, in writing, inform the complainant of that decision and give reasons therefor.

9.—(1) The Commission shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to the court for redress under any other enactment.

Power to investigate not precluded.

(2) If any question arises as to whether the Commission has jurisdiction to investigate any case or class of case under this Act, the Commission or any provider whose actions are under investigation may apply to the Supreme Court for a declaration determining that question.

(3) The fact that an action is commenced in any court in connection with a matter under investigation by the Commission shall not, unless the court otherwise directs, preclude such investigation.

10.—(1) The Commission shall have power to summon any person to attend before the Commission in relation to an investigation being conducted by it and to give evidence or to produce any document which is—

Summoning persons to give evidence.

- (a) in the possession or under the control of such person; and
- (b) relevant to the matter under investigation.

(2) A summons under this section—

- (a) shall be in the form prescribed in the Second Schedule; and
- (b) may be served by a district constable, bailiff or an officer of the Commission so authorized.

Second Schedule.

Obligations
of persons
summoned.

11.—(1) All persons summoned to attend and give evidence or to produce a document before the Commission shall be—

- (a) entitled, in respect of such evidence or the disclosure of any communication or the production of any such document, to the same right or privilege as before a court of law; and
- (b) entitled to be paid their expenses, including travelling expenses, at the rates prescribed by the Witnesses' Expenses Act for witnesses who are entitled to have their expenses paid from public funds:

Provided that the Commission may, if it thinks fit, disallow the whole or any part of such expenses in any case.

(2) Any person who—

- (a) without sufficient cause, fails or refuses to attend before the Commission in obedience to a summons under this Act, or fails or refuses to produce any document which he was required by such summons to produce;
- (b) being a witness, leaves the Commission without the permission of the Commission;
- (c) being a witness, refuses, without sufficient cause, to answer any question put to him by or with the permission of the Commission; or
- (d) wilfully obstructs or interrupts the proceedings of the Commission,

commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or in default of payment thereof to imprisonment for a term not exceeding two years.

Paper, book,
record or
document as
evidence.

12. In all legal proceedings any paper, book, record or document produced to the Commission pursuant to section 10 shall be received as *prima facie* evidence of the truth of the statements contained therein.

13. The funds and resources of the Commission shall consist of— Funds and resources of the Commission.

- (a) such moneys as may from time to time be placed at its disposition for the purposes of this Act by Parliament;
- (b) all other moneys and other property which may in any manner become payable to, or vested in the Commission in respect of any matter incidental to its functions.

14.—(1) The Commission shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles. Keeping of accounts and records.

(2) The accounts of the Commission shall be audited annually by an auditor or auditors appointed annually by the Commission and approved by the Minister.

(3) The Auditor-General shall be entitled at all reasonable times to examine the accounts and other records in relation to the business of the Commission.

15.—(1) The Commission shall, in each year— Annual reports and estimates.

- (a) on or before the 31st day of July, submit to the Minister a report of its activities during the twelve months ending on the 31st day of March in that year, including a statement of its accounts audited in accordance with the provisions of section 14;

- (b) on or before the 30th day of September, submit to the Minister for his approval its estimates of revenue and expenditure for the financial year next following.

(2) The Minister shall cause copies of reports submitted pursuant to subsection (1)(a) together with the annual statement of accounts and auditor's report thereon to be laid on the Tables of the House of Representatives and of the Senate and annual statements of such accounts and auditor's report shall be published in the *Gazette*.

16. The income of the Commission shall be exempt from income tax. Exemption from income tax.

Minister to
make orders.

17.—(1) Subject to the provisions of subsection (2), the Minister may, by order—

- (a) regulate the distribution, purchase or sale of goods or any class or description of goods;
- (b) provide for the recall of certain goods and services which are dangerous or hazardous to safety and the refund or remission by the provider of the purchase price paid;
- (c) provide for the furnishing by persons carrying on or employed in connection with any trade or business of information concerning all or any of the elements of the contents of goods, or the cost or the sale price of goods or any class or description of goods bought or sold whether by wholesale or retail in such trade or business; or
- (d) require the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby persons wishing to purchase any of those goods may ascertain the weight or measurement thereof.

(2) Without prejudice to the generality of subsection (1) (d), the Minister may, by order, require—

- (a) that the prices of those goods shall be marked on the goods or on any container in or from which they are sold; and
- (b) that persons shall not be obstructed in any attempt to ascertain at the place at which they wish to purchase any of those goods, the weight or measurement thereof.

(3) Nothing in subsection (1) or (2) shall be deemed to authorize the Minister to make any order under that subsection regulating the exportation, distribution, purchase, sale or price of any goods the exportation, distribution, purchase, sale or price (as the case may be) of which is, or may be, regulated under or by virtue of the provisions of any Act.

PART IV. *Duties of Providers and Consumers*

18.—(1) At any time before payment is made for any goods (whether sold as new or used) a provider shall, in addition to the requirements of any other enactment relating to the packaging, labelling or description of goods, provide to the consumer, verbally or in writing in the English language, all information concerning the goods being sold. Information to consumer.

(2) The information referred to in subsection (1) is—

- (a) where applicable, the origin, price in the currency of Jamaica, care, terms, components, proper use, weight, size, instructions for assembly and installation of the goods; and
- (b) where chargeable, the professional fees of the provider in respect of the goods.

(3) Where a provider refuses or fails to comply with subsection (1) he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that can be directly attributed to the consumer's lack of information.

(4) A provider who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred thousand dollars.

19.—(1) A consumer shall at all times be entitled to check the weight, volume or other measurement of any goods that he may be purchasing where the weight, volume or other measurement of the good materially affects or determines the price thereof. Measurement of goods.

(2) For the purposes of subsection (1), any provider of any good that is sold by reference to its weight, volume or other measurement shall provide appropriate measurement standards in accordance with the Weights and Measures Act for use by the consumer at the time of purchase.

(3) A provider commits an offence if in selling or purporting to sell any goods by weight or other measurement or by number, he delivers or causes to be delivered to the consumer, a lesser quantity than that purported to be supplied or that corresponds with the price charged.

(4) A provider who contravenes this section commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

Receipt to be given to consumer.

20.—(1) Where a consumer purchases goods or services from a provider, the provider shall give to the consumer a receipt showing—

- (a) the amount paid by the consumer;
- (b) the date on which the purchase is made;
- (c) a description of the goods or services sold;
- (d) where applicable, the professional fee charged; and
- (e) such other information as may be prescribed.

(2) At any time subsequent to the purchase, the receipt issued by the provider shall be adequate proof of the purchase of the goods or services and may be used for the purposes of refund in any of the circumstances specified in this Act.

(3) A provider who contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment for a term of thirty days or to both such fine and imprisonment.

Warranties.

21.—(1) Subject to the standard provisions of warranties, a provider shall issue explicit warranties in relation to his goods or services, as the case may be, whether the goods are new or used, and whether the service offered is the repair of any appliance, furniture, equipment or other good.

(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.

(3) Where a provider is liable only for the free replacement of parts under a warranty agreement, the provider shall not require the consumer to use the services of the provider in effecting the repairs to the equipment.

(4) Implied warranties in the absence of explicit warranties shall apply to the sale of all used goods and to the repair of all goods.

(5) Where the service provided is the repair or replacement of a defective good, there shall be an implied warranty that the repair or any replacement of the good shall be carried out within a reasonable time, and the implied warranties applicable to the contract for sale of goods shall apply in relation to repaired or replacement goods.

(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.

22.—(1) Subsection (2) applies in any case where a provider—

- (a) undertakes to provide a consumer with a good or service upon payment of a fee therefor;
- (b) provides the declared benefit attached to the service or use of the good; and
- (c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.

Damage resulting from use of service or goods.

(2) The provider shall, upon presentation by the consumer of a complaint, accompanied by a document from the Commission substantiating that, in its opinion, and after consultation with the provider, the complaint is valid and well founded—

- (a) undertake to pay the consumer all reasonable costs incurred or to be incurred by the consumer in correcting the damage so caused; and
- (b) initiate payment of compensation within such period, not exceeding seven days after the complaint is received at the registered, regional or local offices of the provider,

provided that where a provider is unable to initiate such payment within the period of seven days aforementioned, he may apply to the Commission seeking leave to extend the period within which the payment may be made.

(3) A provider shall not be relieved of liability if—

- (a) the consumer fails to avail himself of some other good or service that may be recommended by the provider of the primary good or service as a supplementary or complementary good or service; or
- (b) he has provided complementary goods or services which fail to function well or cause damage or other loss.

(4) A provider who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

Damaged
goods sold to
consumer.

23.—(1) Where—

- (a) any good sold to a consumer fails to provide to the consumer the benefit and uninterrupted enjoyment for which it was intended; and
- (b) the failure is determined by the Commission, after consultation with the provider, not to be due to apparent negligence or abuse by the consumer within the comprehensive warranty period,

then the relevant provider shall be responsible for its replacement or repair at no cost to the consumer.

(2) The provider shall, in the event of repair of the good referred to in subsection (1)—

- (a) return the good to the consumer in a fully repaired and functional state within such period, after receipt of the good for replacement or repair, as the Commission, after consultation with the provider, considers to be appropriate.
- (b) if the good is not returned to the consumer within the period determined by the Commission, provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until such time as the consumer's good is replaced or repaired and returned.

(3) A provider who contravenes subsection (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred thousand dollars.

24.—(1) Subject to subsections (3) and (4), where a consumer is encouraged to acquire goods by the provider's declaration and description of the goods and the consumer subsequently discovers that those goods are defective or different in a material particular from those declared or described, the consumer may return the goods to the provider. Return of defective goods.

(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.

(3) Refunds on goods returned to a provider pursuant to subsection (1) shall only be made where the goods are returned to the provider—

- (a) in the condition in which they were purchased; or
- (b) with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods prior to discovery of the material difference between the goods received and the goods that the consumer requested;
- (c) where there is a dispute as to the condition of the goods the Commission may, upon request, examine the goods with a view to making a determination as to the condition of the goods.

(4) A consumer who acquires a good that in every way is similar or identical to the one requested or described and declared by the provider shall not be entitled to a refund if, having left the place from which the provider sold the good, the consumer for any reason decides that he no longer wants it.

(5) A provider who contravenes subsection (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

Return of
electrical
goods.

25.—(1) Subsection (2) shall apply in any case where—

- (a) a consumer purchases any electrical good, believing it to be fully functional and operational; and
- (b) upon attempting to use it, the consumer discovers that it is faulty or non-functional.

(2) The consumer shall, upon returning the good to the provider, be entitled to—

- (a) an exchange of the faulty good for a new functional similar good free of cost; or
- (b) a refund of the amount paid for the good if the provider is unable to establish that the good was damaged as a direct result of the consumer's actions.

Approved
and non-
approved
services.

26.—(1) A provider shall only provide such services as are approved by the consumer and shall not require a consumer to sign an open ended commitment to pay for services which, in addition to those contracted, may, in the provider's opinion, be necessary or appropriate.

(2) A provider who offers a repair service shall—

- (a) disclose to the consumer any and all additional related repairs that he deems necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired good; and
- (b) obtain a written indemnity from the consumer if the consumer chooses not to require the provider to effect the recommended repairs.

(3) A provider who contravenes this section commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

Businesses
offering
repair
services.

27.—(1) Businesses which offer repair services to consumers shall keep records stating—

- (a) the name, address and telephone number of the consumer;

- (b) a reasonably accurate description of the good to be repaired, including any identification number or mark;
- (c) the replacement value of the good in its present state as agreed with the consumer;
- (d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected;
- (e) the date on which the good was received for repair; and
- (f) the date on which the good will be ready for delivery,

and a copy of such information shall be given to the consumer before the repairs are commenced.

(2) A business which contravenes subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

PART V. Misleading and Deceptive Conduct, False Representations and Unfair Practices

28.—(1) No person shall, in the course of trade or business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. Misleading or deceptive conduct.

(2) 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 million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment.

29.—(1) No person shall, in the course of trade or business, engage in conduct that is likely to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose or quantity of goods or services, as the case may be. Misleading public as to the nature, etc., of goods or services.

(2) 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 million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment.

False or
misleading
representation.

30.—(1) No person shall, in the course of trade or business, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services—

(a) falsely represent that—

- (i) the goods or services are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use;
- (ii) services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade or business, qualification, or skill;
- (iii) a particular person has agreed to acquire goods or services;
- (iv) goods are new, reconditioned, or that they were manufactured, produced, processed, or reconditioned at a particular time;
- (v) goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits; or
- (vi) a person has any sponsorship, approval, endorsement, or affiliation;

(b) make a false or misleading representation—

- (i) with respect to the price of any goods or services;
- (ii) concerning the need for any goods or services;
- (iii) concerning the existence, exclusion, or effect of a condition, warranty, guarantee, right or remedy; or
- (iv) concerning the place of origin of goods.

(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.

31.—(1) Where it can be proven that a provider—

- (a) has contracted to provide goods or services;
- (b) pursuant to that contract, has received a deposit in cash or kind; and
- (c) on the contracted delivery date, has failed without reasonable cause to deliver such goods or services or demonstrate that such goods or services are in a reasonably advanced state of production,

Non-delivery of goods or services on contracted date.

that provider shall be deemed to have acted in a fraudulent manner and is liable to be prosecuted in relation thereto.

(2) A provider who is convicted of an offence under subsection (1) is liable to a fine not exceeding two million dollars or imprisonment for a term not exceeding two years 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—

Advertising.

- (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.

Advertised
delivery date.

33.—(1) An advertised delivery date for new, used or repaired goods shall form part of the contractual agreement between the provider and the consumer.

(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.

(3) Any provider who has advertised a completion or delivery date, and has obtained from the consumer a deposit in cash or kind or both, against the provision of the goods or service, may elect to terminate the contract within seven days after the receipt of the deposit and in such case, shall refund the full value of the deposit.

Conditions of
demanding
and accepting
payment, etc.

34.—(1) No person shall demand or accept payment or other consideration for goods or services, if at the time of the demand or acceptance, that person—

- (a) does not intend to supply the goods or services;
- (b) intends to supply goods or services which are materially different from the goods or services in respect of which the payment or other consideration is demanded or accepted; or
- (c) does not have reasonable grounds to believe that the goods or services will be supplied within any specified period, or if no period is specified, within a reasonable time.

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

35. Upon the conviction of a provider of an offence the Court may order that provider—

Court may order payment of damages or costs.

- (a) to make to the consumer, restitution of any deposit made by the consumer;
- (b) to pay to the consumer a sum representing the costs incurred by that consumer as a result of the offence; and
- (c) to pay to the Commission such sum as represents the costs incurred in relation to the prosecution of the offence.

PART VI. *Unfair Contracts*

36. In relation to any breach of duty or obligation, it is immaterial for any purpose of this Part whether the breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.

Breach of duty or obligation.

37.—(1) A person shall not by reference to—

- (a) any term of a contract;
- (b) a notice given to persons generally; or
- (c) particular persons,

Excluding or restricting liability by contract.

exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person shall not so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness as provided for in section 43.

(3) Where a term of a contract or notice purports to exclude or restrict liability for negligence, other than in cases resulting in death or personal injury, the fact that a person agrees with it or is aware of it is not of itself to be taken as indicating his voluntary acceptance of any risk, however the term or notice shall have effect where the Commission determines that it satisfies the requirement of reasonableness as provided for in section 43.

Reliance upon contractual provisions where breach.

38. No party to a contract shall—

- (a) when he is in breach of contract, exclude or restrict his liability in respect of the breach; or

(b) claim to be entitled to render—

- (i) a contractual performance substantially different from that which was reasonably expected of him; or
- (ii) any performance in respect of the whole or any part of his contractual obligation,

except in so far as the contract term satisfies the requirement of reasonableness.

Indemnity
subject to
reasonableness.

39. A consumer shall not by reference to any term of a contract be made to indemnify another person (whether a party to the contract or not) in respect of liability that may be incurred by the other person for negligence or breach of contract, except in so far as the term of the contract satisfies the requirement of reasonableness.

Loss or
damage from
defective
goods or
negligence of
manufacturer.

40.—(1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage—

- (a) arises from the goods proving defective while in consumer use; and
- (b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for the loss or damage shall not be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods except in so far as the Commission determines that the term or notice satisfies the requirement of reasonableness as provided for in section 43.

(2) For the purposes of this section—

- (a) goods are to be regarded as “in consumer use” when a person is using them, or is in possession of them for use, otherwise than exclusively for the purposes of a business; and
- (b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

41. Liability for breach of the obligations arising from the following sections of the Sale of Goods and Hire Purchase Acts shall not be excluded or restricted by reference to any contract term—

Effect of Sale of Goods and Hire Purchase Acts.

(a) sections 13 and 15 of the Sale of Goods Act, in particular—

- (i) an implied condition on the part of the provider that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
- (ii) an implied warranty that the consumer shall have and enjoy quiet possession of the goods;
- (iii) an implied warranty that the goods shall be free from any charge or incumbrance in favour of any third party, not declared or known to the consumer before or at the time when the contract is made; and
- (iv) implied conditions as to quality or fitness; and

(b) sections 9 and 11 of the Hire Purchase Act, in particular—

- (i) implied conditions and warranties; and
- (ii) further implied conditions in special cases.

42.—(1) Where, for the purpose of reliance upon it, a contract term has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the contract has been terminated either by breach or by a party electing to treat it as repudiated.

Satisfying reasonableness where contract terminated.

(2) Where on a breach the contract is nevertheless affirmed by a party entitled to treat it as repudiated, such affirmation does not of itself exclude the requirement of reasonableness in relation to any term of a contract.

43.—(1) For the purposes of this Part and section 46 the requirement of reasonableness in relation to a contract term, is that the term is a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been,

Reasonableness.

known to or in the contemplation of the parties when the contract was made.

(2) The requirement of reasonableness in this Act in relation to a notice (not being a notice having contractual effect), is that the notice should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen.

(3) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

Alternative
dispute
resolution.

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

PART VII. *Miscellaneous*

Goods or
services
acquired by
installment.

45.—(1) This section applies to any case where a provider contracts to provide a consumer with a good or service over an extended period of time, and that provider contracts to receive periodic payments from the consumer for the good or service.

(2) The provider, as the case may be, shall—

- (a) be required to present an accurate claim for the exact amount of, or the exact percentage of, the total value of the good or service actually received to date by the consumer; and
- (b) upon presentation of such accurate claim, be entitled to void the contract if payment in full is not made within a reasonable time after the presentation of the claim, or by a pre-determined payment date which forms part of the contract.

(3) In the event that the provider is unable to present an accurate claim as mentioned in subsection (2), the provider, as the case may be, may act in accordance with subsection (4).

(4) The provider may—

- (a) present the consumer with an estimated claim; and

- (b) if the estimated claim is reasonably accurate, request that the consumer pays the estimated amount on the conditions specified in subsection (5).

(5) The conditions referred to in subsection (4) are that—

- (a) where the amount estimated is greater than the accurate claim, the amount paid by the consumer will be credited to the amount owing at the next time that an accurate claim is presented; and
- (b) the provider shall under no circumstances, be able to void the contract or impose any penalty therein contained in the event of breach by the consumer, solely on the ground that the estimated amount has not been paid by the consumer, either in full or in part.

(6) Any provider who presents an estimated claim for any good or service shall be required to present an accurate claim no later than 90 days after presentation of the estimate.

(7) Subsection (6) shall apply notwithstanding that the consumer of the good or service does not pay the estimated amount claimed or pays it in full or in part.

46.—(1) Where a service is to be provided to a consumer—

- (a) the provider is deemed to be providing the consumer with a benefit under the relevant contract; and
- (b) the provisions of subsection (2) shall apply where a fee is collected from the consumer for that service.

Apportionment of payments where service not received.

(2) The provider shall—

- (a) be liable to—
 - (i) make a full refund to the consumer; and
 - (ii) further compensate the consumer for all expenses reasonably incurred by the consumer as a result of contracting the provider to provide the benefit,

if for reasons not attributable to the consumer, the benefit is not received by the consumer; or

- (b) where the benefit is received only in part—
 - (i) refund a proportionate part of the fees collected; or
 - (ii) subject to subsection (3), be entitled to receive a similar proportionate part of the fees if not yet paid.

(3) Subsection (2) shall not apply in any case where the consumer contracts to pay the provider the prescribed fee regardless of whether the consumer receives the benefit.

(4) The provider who offers a service to the consumer shall—

- (a) be required to stipulate the extent of the benefit that shall be deemed to be attached to the service; and
- (b) provide the consumer with an appropriate warranty that—
 - (i) the benefit shall be enjoyed for a reasonable time, subject to the fulfillment of such conditions attached by the provider as may be reasonable to the consumer's enjoyment of that benefit; and
 - (ii) in the absence of the enjoyment of the benefit, the provider shall again provide the service free of cost to the consumer, however the performance of the warranty is subject to the Commission's determination as to the provision of or absence of the benefit.

(5) A provider who contravenes subsection (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars and in default of payment to imprisonment for a term not exceeding six months.

Purporting to act on a Bill of Sale.

47.—(1) A provider commits an offence if, in the event of default in repayment of a loan he acts on the powers contained in a Bill of Sale of chattels pledged by a consumer he employs any person other than a Bailiff to recover any or all of the chattels pledged in the Bill of Sale to the provider.

(2) A provider who commits an offence under subsection (1) shall, upon summary conviction before a Resident Magistrate be liable to a fine not exceeding one million dollars and in default of payment to imprisonment for a term not exceeding one year.

(3) The court may order a provider convicted of an offence to compensate the consumer for all expenses reasonably incurred as a result of the breach and the legal action.

(4) A provider commits an offence if, in taking action to recover any or all of the chattels pledged by the consumer in the Bill of Sale to the provider in the event of default in repayment of a loan, the provider carries out an act of seizure although the consumer's indebtedness to the provider has already been discharged or is currently being serviced in accordance with existing contractual provisions.

(5) A provider who commits an offence under subsection (4) shall, upon summary conviction before a Resident Magistrate, be liable to a fine not exceeding one million dollars and in default of payment to imprisonment for a term not exceeding one year.

(6) The court may order a provider convicted of an offence under subsection (4) to pay to the consumer an amount equal to two times the market value of the chattels seized plus an amount of ten thousand dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.

(7) Any person who—

- (a) not being a Bailiff, purports to be a Bailiff; or
- (b) being a Bailiff,

wrongfully seizes the chattels of a consumer shall, notwithstanding any other charge that may be brought against him, be guilty of an offence under this Act.

(8) A person who commits an offence under subsection (6) shall, upon summary conviction before a Resident Magistrate be liable to a fine not exceeding one million dollars and in default of payment to imprisonment for a term not exceeding one year.

(9) The Court may order a person convicted of an offence under subsection (8) to pay to the consumer an amount equal to two times the market value of the chattels seized plus an amount of ten thousand dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.

(10) Any Bailiff or person purporting to be a Bailiff who—

- (a) threatens to seize the chattels of a consumer under the powers contained in a Bill of Sale although the consumer's indebtedness to the provider has already been discharged; or
- (b) recklessly damages the chattels of a consumer while exercising distraint,

shall be guilty of an offence and shall, upon summary conviction before a Resident Magistrate, be liable to a fine not exceeding one million dollars and in default of payment to imprisonment for a term not exceeding one year.

Registration
of providers.

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.

49. The Minister may, by order, subject to affirmative resolution, amend the monetary penalties specified in this Act. Minister may amend monetary penalties.

50. The Minister may make regulations, subject to affirmative resolution, for the purposes of giving effect to the provisions of this Act. Regulations.

51. All real and personal property belonging to the Prices Commission, including all moneys standing to the credit of or receivable by that Commission shall, on a day to be appointed by the Minister by Order published in the *Gazette*, without any conveyance, assignment or other transfer, belong to and be vested Vesting of property.

in the Consumer Affairs Commission.

Constitution. FIRST SCHEDULE (Section 4)

1. The Commission shall consist of such number of members, not being less than seven nor more than fifteen, as the Minister may from time to time determine.

Appointment of members.

2.—(1) The members of the Commission shall be appointed by the Minister by instrument in writing and, subject to the provisions of this Schedule, shall hold office for a period not exceeding three years, and shall be eligible for reappointment.

Acting members.

(2) The Minister shall appoint one of the members of the Commission to be the chairman and another to be deputy chairman thereof.

Resignations.

3. If the chairman or any other member of the Commission is absent or unable to act, the Minister may appoint any person to act temporarily in the place of the Chairman or such member.

4.—(1) Any member of the Commission, 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 Commission.

Revocation.

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

Gazetting names of members.

5. The Minister may at any time revoke the appointment of any member of the Commission.

Procedure for meetings.

6. The names of all members of the Commission as first constituted and every change in the membership thereof, shall be published in the *Gazette*.

7.—(1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Commission may determine.

(2) The chairman, or in his absence the deputy chairman, shall preside at meetings of the Commission, and in the absence of both the chairman and the deputy chairman from any meeting,

the members present at that meeting shall elect one of their number to preside thereat.

(3) The quorum of the Commission shall be five, including the chairman or other member presiding at the meeting.

(4) The decisions of the Commission shall be by a majority of votes and, in any case in which the voting is equal, the chairman or other member presiding at the meeting shall have a casting vote in addition to an original vote.

(5) Minutes in proper form of each meeting shall be kept by the secretary and shall be confirmed by the chairman or other member presiding as soon as practicable thereafter at a subsequent meeting.

(6) The acts of the Commission shall be authenticated by the signature of the chairman or the secretary of the Commission.

(7) Subject to the provisions of this paragraph the Commission shall have power to regulate its own proceedings.

(8) The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Officers and servants.

8.—(1) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a secretary and such other officers, servants and agents as it thinks necessary for the proper performance of its functions:

Provided that no appointment to a post carrying a salary in excess of the prescribed rate shall be made without the prior approval of the Minister.

(2) The prescribed rate means five hundred thousand dollars or such higher rate as may be approved by Order of the Minister.

(3) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of Jamaica to any office with the Commission and any public officer so appointed shall, in relation to pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

Seal of the Commission.

9.—(1) The seal of the Commission shall be kept in the custody of the chairman or the secretary and shall be affixed to instruments pursuant to a resolution of the Commission in the presence of the chairman, or any other member of the Commission, and the secretary.

(2) The seal of the Commission shall be authenticated by the signatures of the chairman, or any other member authorized to act in that behalf, and the secretary.

(3) All documents other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the chairman, or any other member authorized to act in that behalf, or the secretary.

Protection of members.

10.—(1) No member of the Commission shall be personally liable for any act or default of the Commission done or omitted to be done in good faith in the course of the operations of the Commission.

(2) Where any member of the Commission is exempt from liability by reason only of the provisions of sub-paragraph (1) the Commission shall be liable to the extent that it would be if such member were a servant or agent of the Commission.

Disclosure of interest.

11. A member of the Commission who is in any way interested in a company or undertaking which is in any proceedings before the Commission shall disclose to the Commission the fact and nature of his interest and shall not take part in any deliberation or any decision of the Commission relating to such matter, and such a disclosure shall forthwith be recorded in the records of the Commission.

Remuneration of members.

12. There shall be paid to the members of the Commission, such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

Office of chairman not a public office.

13. The office of chairman or member of the Commission shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

Expenses of the Commission.

14. The expenses of the Commission, including the

remuneration of the members and staff thereof, shall be defrayed out of the funds of the Commission.

SECOND SCHEDULE

(Section 9)

Summons to Witness

To: (name of person summoned and his calling and address, if known)

You are hereby summoned to appear before the Consumer Affairs Commission at (*place*) upon the day of at o'clock and to give evidence respecting (*state the matter*). (*If the person summoned is to produce any documents, add*):

And you are required to bring with you (*specify the papers, books, records and documents required*).

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest may be issued.

Passed in the House of Representatives this 28th day of September, 2004.

MICHAEL PEART

Speaker.

Passed in the Senate this 19th day of November, 2004 with twenty-five (25) amendments.

SYRINGA MARSHALL-BURNETT, C.D.

President.

On the 1st day of March, 2005 the House of Representatives agreed to the amendments made by the Senate.

MICHAEL PEART

Speaker.

This printed impression has been carefully compared by me with the Bill which has passed the House of Representatives and Senate, and has been found by me to be a true and correct printed copy of the said Bill.

Clerk to the Houses of Parliament.

On the 1st day of March, 2005 the House of Representatives agreed to the amendments made by the Senate.

MICHAEL PEART

Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.

A BILL
ENTITLED

AN ACT to Provide for the promotion and protection of consumer interests, in relation to the supply of goods and the provision of services in order to ensure protection of life, health and safety of consumers and others, the establishment of a Consumer Affairs Commission and for connected purposes.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

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