

**TURKS AND CAICOS ISLANDS
CONSUMER PROTECTION BILL 2016**

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

CLAUSE

1. Short title and commencement
2. Interpretation
3. Ordinance not in derogation of any other law

PART II

ADMINISTRATION

4. Appointment of Director of Consumer Affairs
5. Functions and powers of Director
6. Minister may give directions
7. Complaints to Director
8. Discretion not to conduct investigation
9. Power to investigate not precluded
10. Director may summon persons to give evidence
11. Obligations of persons summoned
12. Paper, book, record or document as evidence
13. Order to discontinue misleading or deceptive conduct or unfair practices

PART III

CONSUMER SAFETY

14. Minister may restrict imports, etc.
15. Compulsory recall of goods
16. Compliance with goods recall notice
17. Loss or damage caused by contravention of goods recall notice
18. Consultation to be held in certain cases
19. Exception in case of danger to public

PART IV

DUTIES OF PROVIDERS TO CONSUMERS

20. Information to consumer
21. Measurement of goods
22. Receipt to be given to consumer
23. Warranties
24. Damage resulting from use of service or goods
25. Damaged goods sold to consumer
26. Return of defective goods
27. Return of materially different goods
28. Return of electrical goods

PART V

MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATION
AND UNFAIR BUSINESS PRACTICES

29. Approved and non-approved services
30. Businesses offering repair services
31. Misleading, deceptive or unconscionable conduct
32. Misleading public as to the nature, etc., of goods or services
33. False, misleading or deceptive representation
34. Non-delivery of goods or services on contracted date
35. Advertising
36. Advertised delivery date
37. Conditions of demanding and accepting payments
38. Court may order payment of damages or costs
39. Proceedings not to be instituted

PART VI

ENFORCEMENT

40. Power to make test purchases, etc.
41. Power to enter premises and to seize goods, etc.
42. Offences connected to exercise of powers under section 41
43. Notice of test
44. Compensation

PART VII

MISCELLANEOUS

45. Goods or services acquired by installment
46. Apportionment of payments where service not received
47. Purporting to act on a Bill of Sale
48. Regulations
49. Repeal

SCHEDULE: Summons to Witness

TURKS AND CAICOS ISLANDS

A PROPOSAL

FOR

A

BILL

FOR

AN ORDINANCE TO MAKE PROVISION FOR THE PROTECTION OF CONSUMER INTERESTS IN RELATION TO THE SUPPLY OF GOODS AND SERVICES; AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Consumer Protection Ordinance 2016 and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette*, and different dates may be appointed for different provisions and different purposes.

Interpretation

2. (1) In this Ordinance—

“child” means a person who has not attained the age of eighteen years;

“consumer” in relation to—

(a) any goods, means—

(i) a natural person who acquires or enters a contract 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 (otherwise than for the purposes of any business of his); or

(c) any accommodation, means any person who wishes to occupy the accommodation (otherwise than for the purposes of any business of his);

“consumer protection policy” means the guiding principles for consumer protection as published by the Minister from time to time which may include the enhanced rights and remedies available to the consumer;

“Director” means the Director of Consumer Affairs appointed under section 4;

“goods” has the meaning ascribed thereto in the Sale of Goods Ordinance;

“inspector” means the Director or a person appointed as an inspector under section 4;

“Minister” means the Minister responsible for Consumer Affairs;

“provider” in relation to—

(a) any goods, means any person who sells goods; or

(b) any services or facilities, means any person who provides services or facilities;

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

Ordinance not in derogation of any other law

3. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

PART II

ADMINISTRATION

Appointment of Director of Consumer Affairs

4. (1) Subject to the laws relating to the public service, there shall be appointed a Director of Consumer Affairs whose office shall be a public office and who shall perform the functions assigned to the Director under this Ordinance.

(2) Subject to the law relating to the public service, there shall be appointed such number of officers and inspectors as are

necessary for carrying into effect the provisions of this Ordinance, whose offices shall be public offices.

Functions and powers of the Director

5. (1) The functions of the Director are—

- (a) to receive, act and attempt to settle, complaints under this Ordinance;
- (b) to 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 him to determine whether the goods were sold or the services were provided in contravention of this Ordinance;
- (c) to carry out, on his own initiative, such other investigations in relation to the availability of goods of any class or description as he thinks fit and make such report and recommendations as he thinks fit to the Minister;
- (d) to promote the development of organisations formed for the protection of the consumer;
- (e) to collect, compile, analyze and publish information in relation to any trade or business;
- (f) to provide information to consumers on their rights as consumers and any other form of consumer education;
- (g) to resolve disagreements between consumers and providers
- (h) to formulate and implement standards in relation to the consumer protection policy; and
- (i) to advise the Minister generally in relation to consumer issues;

(2) In carrying out his functions, the Director has the power to do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with carrying out his functions or to be incidental to their proper discharge.

Minister may give directions

6. The Minister may, give to the Director written direction, as to government policy that is to be applied by the Director in the exercise of his powers and the performance of his duties, and the Director shall give effect to that direction.

Complaints to Director

7. (1) A complaint may be made to the Director by a person who claims to have been adversely affected in relation to the acquisition of goods or services.

(2) Where the complainant—

(a) is a child, the complaint may be made by his parent or guardian;

(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) A complaint to the Director may be made orally or in writing.

(4) The Director may, upon the request of a complainant specified in subsection (2), assist 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 Director shall require the complainant to produce a written version of the complaint signed by the complainant.

Decision not to conduct investigation

8. (1) The Director may determine whether to undertake or continue an investigation under this Ordinance and in particular, but without prejudice to the generality of the foregoing, may refuse to undertake or continue any investigation if he 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 is guilty of unreasonable delay in 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

(f) having regard to all the circumstances of the case, no investigation or further investigation is necessary.

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

Power to investigate not precluded

9. (1) The Director 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.

(2) If any question arises as to whether the Director has jurisdiction to investigate any case or class of case under this Ordinance, the Director may apply to the 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 Director shall not, unless the court otherwise directs, preclude such investigation.

Director may summon persons to give evidence

10. (1) The Director may summon any person to attend before the Director in relation to an investigation being conducted by him and to give evidence or to produce any document in his possession or under the control of such person.

(2) A summons under this section—

(a) shall be in the form set out in the Schedule; and

(b) may be served by a police officer, bailiff or the Director.

Obligation of persons summoned

11. (1) A person summoned to attend and give evidence or to produce a document before the Director is—

(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 his expenses, including traveling expenses, at the rates as are determined for witnesses who are entitled to have their expenses paid from public funds.

(2) A person who—

(a) without sufficient cause, fails or refuses to attend before the Director in obedience to a summons

under this Ordinance, or fails or refuses to produce any document which he was required by such summons to produce;

- (b) being a witness, leaves the proceedings without the permission of the Director;
- (c) being a witness, refuses, without sufficient cause, to answer any question put to him by or with the permission of the Director; or
- (d) wilfully obstructs or interrupts the proceedings,

commits an offence and is liable on summary conviction to a fine of \$1,000.

Paper, books, record or document as evidence

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

Order to discontinue misleading or deceptive conduct or unfair practices

13. (1) Where the Director is satisfied that a provider has engaged in conduct that contravenes any provision of this Ordinance, he—

- (a) shall make an order prohibiting the provider from engaging in such conduct;
- (b) may negotiate with the provider and conclude an arrangement for—
 - (i) the discontinuance of such conduct;
 - (ii) the refund, with interest, if any, the price of the goods or service;
 - (iii) any matter relating to such conduct.

(2) An arrangement under subsection (1)—

- (a) shall be in writing and signed by the parties thereto; and
- (b) may be concluded at any time after the institution of an investigation, but before the institution of court proceedings, if any.

PART III

CONSUMER SAFETY

Minister may restrict imports, etc.

14. (1) Subject to subsection (3), the Minister may, by Order—

- (a) prohibit the importation or exportation of goods of any class or description of goods from or to any country;
- (b) prohibit the importation or exportation of goods or any class or description of goods from or to any country except under the authority of a licence granted by the Minister;
- (c) regulate the distribution, purchase or sale of goods or any class or description of goods;
- (d) control the prices at which goods, or any class or description of goods, may be sold whether by wholesale or retail;
- (e) subject to section 15, provide for the recall of certain goods which are dangerous or hazardous to safety and the refund or remission by the vendor of the purchase price paid;
- (f) 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 cost or of 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
- (g) 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)(g), 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) Subsection (1) shall not authorise the Minister to make an Order regulating the exportation or importation of any goods if the exportation or importation of such goods is, or may be, regulated under the provisions of any other enactment.

Compulsory recall of goods

15. (1) Subject to sections 18 and 19 where—

- (a) a provider supplies goods on or after the commencement of this Ordinance; and
- (b) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person and that the provider has not taken satisfactory action to prevent the goods causing injury to any person, the Minister may, by notice in writing published in the *Gazette*, require the provider to do one or more of the following—
 - (i) take action within the period specified in the notice to recall the goods;
 - (ii) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following—
 - (A) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;
 - (B) the circumstances, being circumstances specified in notice, in which the use of the goods is dangerous; and
 - (C) procedures for disposing of the goods specified in the notice;
 - (iii) inform the public, or class of persons specified in the notice, in the manner and within the period specified in the notice, that the provider undertakes to do whichever of the following the provider thinks is appropriate—
 - (A) except where the notice specifies a dangerous characteristic of the goods, repair the goods;
 - (B) replace the goods;

(C) refund to a person to whom the goods were supplied, whether by the provider or by another person, the price of the goods, within the period specified in the notice.

(2) The Minister may by notice published in the *Gazette* give directions as to the manner in which the provider is to carry out a recall of goods required under subsection (1).

(3) Where the provider under subsection (1) undertakes to repair goods, the provider shall cause the goods to be repaired so that any defect in the goods specified in the notice under subsection (1) is remedied.

(4) Where the provider under subsection (1) undertakes to replace goods, the provider shall replace the goods with like goods which, if a defect in, or a dangerous characteristic of, the first-mentioned goods was specified in the notice under subsection (1), do not have that defect or characteristic.

(5) Where the provider under subsection (1) undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the provider.

(6) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under subsection (1), a person who has supplied or supplies any of the recalled goods to another person outside the Islands shall, as soon as practicable after the supply of those goods, give notice in writing to that other person, addressed to his last known address—

(a) stating that the goods are subject to recall; and

(b) if the goods contain a defect or have a dangerous characteristic, setting out the nature of that defect or characteristic.

(7) Where a person is required under subsection (6) to give notice in writing to another person, that person shall, within fourteen days after giving that notice, provide the Minister with a copy of that notice.

(8) A person who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine of \$10,000.

Compliance with goods recall notice

16. (1) Where a notice under section 15(1) is in force in relation to a person, he—

(a) shall comply with the requirements and directions in the notice; and

(b) shall not, where the notice specifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000.

Loss or damage caused by contravention of goods recall notice

17. Where—

(a) a person contravenes section 15 by—

(i) supplying goods of a kind in relation to which a notice under section 15(1) is in force; or

(ii) failing to comply with the requirements of such notice; and

(b) another person suffers loss or damage by reason of a defect in or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods,

that other person shall be deemed for the purposes of this Ordinance to have suffered the loss or damage by the supplying of the goods, or by the failure of the first-mentioned person to comply with the notice, as the case may be.

Consultation to be held in certain cases

18. (1) Subject to section 19, where the Minister proposes to publish a notice under section 15(1) in relation to goods of a particular kind, the Minister shall prepare—

(a) a draft of the notice that he proposes to publish; and

(b) a summary of his reasons,

and shall, by notice published in the *Gazette*, invite any person, in this section referred to as a “provider”, who supplied or proposes to supply goods of that kind to notify the Minister, within the period, in this section referred to as “the relevant period”, of 10 days commencing on the day specified in the last-mentioned notice, being not earlier than the day on which that notice is published in the *Gazette*, whether the provider wishes the Minister to hold a consultation in relation to the proposed publication of the first-mentioned notice.

(2) A notice published under subsection (1) shall set out a copy of the draft notice under section 15(1) and a copy of the

summary of the reasons for the proposed publication of the notice.

(3) If no provider notifies the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the provider wishes the Minister to hold consultations in relation to the proposed publication of the notice under section 15(1), the Minister shall proceed to take such action under section 15 as he thinks fit.

(4) If a provider notifies the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the provider wishes the Minister to hold consultations in relation to the proposed publication of the notice under section 15(1), the Minister shall appoint a day (being not later than fourteen days after the end of that period), time and place for the holding of the consultation, and give notice of the day, time and place so appointed to each provider who so notified the Minister.

(5) At a consultation under this section—

- (a) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present;
- (b) each provider who notified the Minister in accordance with subsection (4) is entitled to be present or to be represented;
- (c) any other person whose presence at the consultation is considered by the Minister to be appropriate is entitled to be present or to be represented; and
- (d) the procedure to be followed shall be as determined by the Minister.

(6) The Minister shall cause a record of proceedings at a consultation under this section to be kept.

(7) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present or who is representing such a person is given a reasonable opportunity at the consultation to present his case and, in particular, to inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the consultation, other than any documents that contain particulars of a secret formula or process, and to make submissions in relation to those documents.

(8) As soon as is practicable after the conclusion of a consultation in relation to the proposed publication of a notice under section 15(1), the Minister shall proceed to consider what action he should take under section 15.

Exception in case of danger to public

19. (1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister may, immediately, by notice published in the *Gazette*, publish a notice in relation to the goods under section 15(1).

(2) Where the Minister publishes a notice in the *Gazette* under subsection (1)—

- (a) in a case where the notice is published before the Minister takes any action under section 15(1) in relation to goods of a particular kind, section 17 does not apply in relation to the action that the Minister may take under section 15(1) in relation to goods of that kind; or
- (b) in any other case, any action taken by the Minister under section 15(1) in relation to goods of a particular kind ceases to have effect and, if a consultation had, under section 17, been arranged or had commenced, the Minister may publish the notice under section 15(1) without regard to the action taken under section 17.

PART IV**DUTIES OF PROVIDERS TO CONSUMERS****Information to consumer**

20. (1) At any time before payment is made for any item of goods of, or above a prescribed value (whether sold as used or unused), a provider shall provide, both orally and in writing, all information in the English Language to the consumer concerning the goods being sold including, where applicable—

- (a) the origin;
- (b) price in the currency of the Islands;
- (c) care terms;
- (d) components;
- (e) hazards;
- (f) proper use;
- (g) assembling;
- (h) installation;
- (i) weight and size of the goods; and

(j) where chargeable, the professional fees of the provider being charged in respect of the goods.

(2) Where a provider 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.

Measurement of goods

21. (1) A consumer shall at all times be entitled to check the weight, volume or other measurement of the goods sought to be purchased where the weight, volume or other measurement of the goods materially affects or determines the price thereof.

(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 Ordinance 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 knowingly 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.

Receipt to be given to consumer

22. (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 or the service is rendered;
- (c) a description of the goods sold or services rendered;
- (d) the professional fees charged, if applicable; and
- (e) such other information as the Minister may by regulations prescribe.

(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 Ordinance.

(3) A provider who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

Warranties

23. (1) 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 goods.

(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 the Islands shall be deemed to extend to the provider in the Islands 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) 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.

Damage resulting from use of service or goods

24. (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 thereof;
- (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.

(2) The provider shall, upon presentation of a substantiated claim by the consumer—

- (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 all such compensation within a period not exceeding seven days after the complaint is

received at the registered, regional or local offices of the provider.

(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 good or service; or
- (b) has provided complementary goods or services which fail to function well or cause damage or other loss.

(4) A provider who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$5,000.

Damaged goods sold to consumer

25. (1) A provider who sells a consumer any good that, due to no apparent negligence or abuse by the consumer within the comprehensive warranty period, fails to provide to the consumer the benefit and uninterrupted enjoyment for which it was intended, 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 ten days of receipt of the good for replacement or repair; or
- (b) if the good is not returned to the consumer within the period of ten days, 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.

Return of defective goods

26. (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 in a material particular from those declared or described, the consumer may return the goods to the provider.

(2) Where goods are returned under subsection (1), the provider shall at the election of the consumer—

- (a) replace the goods within two days of the return of the goods if a replacement is objectively available; or
- (b) immediately refund to the consumer the value of the goods or such other amount as may be agreed between the consumer and the provider.

(3) A provider is obliged to replace or make refund on the goods returned under subsection (1) only where the goods are returned to the provider—

- (a) in the condition 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 defect.

(4) A consumer who acquires goods 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 goods, the consumer for any reason decides that he no longer wants it.

Return of materially different goods

27. (1) 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 different in a material particular from that intended to be acquired, subject to subsection (3), the consumer may return the goods to the supplier.

(2) Where goods are returned under subsection (1), the provider shall immediately give to the customer 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 the provider.

(3) Subsection (1) does not apply unless 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.

Return of electrical goods

28. (1) In any case where—

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

the consumer may return the goods.

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

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

PART V

MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATION AND UNFAIR BUSINESS PRACTICES

Approved and non-approved services

29. (1) Subject to subsection (2), 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) The provider's authority to provide services not approved by the consumer shall be restricted to ten *per cent* of the value of the approved services.

(3) 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 for the consumer if the consumer chooses to require the provider to effect the recommended repairs.

Businesses offering repair services

30. 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.

Misleading, deceptive or unconscionable conduct

31. (1) A person shall not, in the course of trade or business—

- (a) engage in conduct that is misleading or deceptive or is likely to mislead or deceive;
- (b) make an unconscionable representation in respect of a particular transaction and, in determining whether or not a representation is unconscionable, there may be taken into account that the person making the representation or his employer or principal knows or ought to know—
 - (i) that the consumer is not reasonably able to protect his interests because of his physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
 - (ii) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (c) engage in unconscionable conduct in respect of a particular transaction and, in determining whether or not conduct is unconscionable, there may be taken into account that the person is—
 - (i) withholding from the consumer material information, or providing material information in terms which cannot be understood by the

consumer; and in particular, where the person knows or ought to know that the consumer is not reasonably able to protect his interests because of his physical infirmity, mental disorder or impairment, age, illiteracy, or inability to understand the language or similar factors;

- (ii) supplying and charging the consumer for goods and services which were not part of the transaction without first obtaining the agreement of the consumer;
- (iii) failing to make a full refund (or an appropriate refund) within 30 days from the date the consumer requested a refund, in circumstances where the person failed to supply or substantially supply goods or services under the terms and conditions of the transaction;
- (iv) placing a lien on property belonging to the consumer for the purpose of inducing the consumer to pay for the unauthorised supply of goods or services, either at the time the goods or services are supplied or at a later date.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

(3) For the purpose of this section—

“estimate” means a representation, whether written or oral, indicating the likely price that will be charged in respect of consumer goods or services;

“quote” means a written and signed representation setting out the actual price that will be charged in respect of consumer goods or services.

Misleading public as to the nature, etc., of goods or services

32. (1) A person shall not, 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.

(2) A person who contravenes subsection (1) commits an offence is liable on summary conviction to a fine of \$5,000.

False, misleading or deceptive representation

33. (1) A person shall not, 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 make a false or misleading representation—

- (a) that 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, if they are not;
- (b) that the goods or services are supplied by any particular person or by any person of a particular trade, qualification, or skill, if they have not;
- (c) that a particular person has agreed to acquire goods or services;
- (d) that the goods are new, unused, reconditioned, or that they were manufactured, produced, processed, reconditioned at a particular time, if they are not;
- (e) that the goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits they do not have;
- (f) that a service, part, replacement or repair is needed, if it is not;
- (g) that a repair or service has been done or a part has been replaced, if it has not;
- (h) that a specific price advantage exists, if it does not;
- (i) that the goods or services are offered at a discounted or sale price unless they have been offered at the full or undiscounted price preceding the sale;
- (j) about the reason why the goods or services are offered at a discounted or sale price;
- (k) that any goods or services are needed;
- (l) concerning the existence, exclusion, or effect of a condition, warranty, guarantee, right or remedy;
- (m) concerning the place of origin of goods.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

Non-delivery of goods or services on contracted date

34. (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, is unable to deliver such goods or services without reasonable excuse or is unable to demonstrate that such goods are in a reasonably advanced state of production,

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 on summary conviction to a fine of \$10,000.

Advertising

35. (1) A person shall not, in the course of trade, advertise at a specified price, goods or services which that person does not—

- (a) intend to offer for supply; or
- (b) have reasonable grounds for believing can be supplied by that person at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

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

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

Advertised delivery date

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

(2) Where a provider fails to meet the advertised delivery date, the provider, as the case may be, shall refund to the consumer all moneys paid, plus an amount equal to ten *per cent* of the amount deposited for each week that the goods are not

delivered commencing after a period of (not more than) fourteen days after the advertised delivery date.

Conditions of demanding and accepting payments

37. A person shall not 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.

Court may order payment of damages or costs

38. Where a person is convicted of an offence under this Part the court may, in addition to imposing a penalty, order the provider—

- (a) to make to the consumer, restitution of any payment made by the consumer; and
- (b) to pay to the consumer, by way of damages, a sum representing the costs incurred by that consumer as a result of the offence.

Proceedings not to be instituted

39. A person shall not be charged with an offence under this section 31, 32, 33, 34 or 35 where such person—

- (a) agrees to attempts made by the Director to effectively settle a complaint as provided in section 5(1)(a); or
- (b) complies with an order issued by the Director under section 13 for the person to cease engaging in such conduct.

PART VI

ENFORCEMENT

Power to make test purchases, etc.

40. An inspector may, for the purposes of enforcement of this Ordinance or the regulations, make test purchases of goods or otherwise ascertain whether the safety provisions or any other provisions of this Ordinance or the regulations or of an order under this Ordinance are being complied with.

Power to enter premises and to seize goods, etc.

41. (1) An inspector who has reasonable cause to believe that an offence under this Ordinance or the regulations has been committed, may at all reasonable times and on production, if required, of his credentials enter any premises other than premises or parts of premises used exclusively as a dwelling house and while there may—

- (a) inspect any goods found;
- (b) require any person carrying on a business on the premises or employed in or connected with the business to produce books or documents relating to the business and to permit the inspector to take copies of or any entry in such books or documents;
- (c) examine any procedure (including any arrangements for carrying out a test connected with the production of goods);
- (d) seize and detain goods for testing;
- (e) seize and detain goods or documents which he believes may be required as evidence in proceedings under this Ordinance;
- (f) for the purpose of exercising his powers to seize goods under this section and to the extent that it is reasonably necessary in order to ensure compliance with any provision referred to in section 40, require any person having authority to do so to break open any container, and if the person does not comply, the inspector may do so himself.

(2) An inspector who seizes goods or documents in exercise of his powers under subsection (1) shall, in a written statement specifying the nature and amount of items seized, inform the person from whom they are seized.

(3) For the purpose of proceedings taken or transactions made under this Ordinance, the written statement of an inspector given under subsection (2) has effect as a receipt for the goods or documents seized.

(4) A magistrate who is satisfied by sworn information in writing that there are reasonable grounds to believe that—

- (a) goods, books or documents which an inspector has power to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Ordinance or the regulations; or
- (b) an offence under this Ordinance or the regulations has been, is being, or is about to be committed on any premises;

and that—

- (c) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or
- (d) an application for admission or the giving of the notice mentioned in paragraph (c) would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

may by warrant under his hand, which shall continue in force for a period of one month, authorise any inspector to enter the premises, if need be by force.

(5) An inspector who enters premises by virtue of this section may take with him such other persons and equipment as appears necessary to him, and on leaving premises which he enters by virtue of a warrant under subsection (4), where either the premises are unoccupied or the occupier is temporarily absent, he shall affix a notice in a conspicuous place stating that the premises were entered for the purpose of this section, and as far as practicable shall leave the premises as effectively secured against trespassers as he found them.

Offences connected to exercise of powers under section 41

42. A person who—

- (a) wilfully obstructs an inspector acting in the exercise of any power conferred on him by or under section 41;

- (b) wilfully fails to comply with any requirement properly made to him by an inspector under section 41;
- (c) without reasonable cause, fails to give an inspector acting under section 41 such assistance or information as he may reasonably require of the person for the performance of the inspector's functions under this Part;
- (d) in giving information as mentioned in paragraph (c) makes a statement which he knows to be false;
- (e) not being an inspector purports to act as an inspector under this Ordinance;
- (f) discloses to another person, where the disclosure is not made in the performance of his duty—
 - (i) information with respect to a manufacturing process or trade secret obtained by him in premises which he has entered by virtue of section 41; or
 - (ii) information otherwise obtained by him under this Ordinance;

Commits an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment for six months.

Notice of test

43. (1) Where goods seized or purchased by an inspector in pursuance of this Part are submitted to a test, the inspector shall—

- (a) if the goods were seized, inform the person from whom they were seized of the result of the test;
- (b) if the goods were purchased and the test leads to proceedings for an offence under this Ordinance, inform the person from whom the goods were purchased of the result of the test,

and where as a result of the test proceedings for an offence are instituted against a person, the inspector shall allow the person to have the goods tested independently if it is reasonably practicable to do so.

(2) The Minister may by order provide for the testing of goods seized or purchased by an inspector in pursuance of this Ordinance and in particular may in those orders provide that the test be carried out at the Ministry's expense in a manner, by a

person, and at a laboratory or testing facility specified in the order.

Compensation

44. (1) Where in the exercise of his powers under section 41 an inspector seizes and detains any goods, and the owner suffers loss by reason of the goods being seized or by reason that, during the detention, the goods are lost or damaged or deteriorate, unless the owner is convicted of an offence under this Ordinance committed in relation to the goods, the owner is entitled to compensation for the loss so suffered.

(2) Any disputed question as to the right to or the amount of any compensation payable under this section shall, on the written application of the owner or of the Attorney-General, be determined as follows—

- (a) if the amount of the compensation claimed does not exceed \$10,000, by a magistrate; or
- (b) if the amount of the compensation claimed exceeds \$10,000 by a judge of the Supreme Court,

in like manner as if the magistrate or the judge were a single arbitrator appointed pursuant to the provisions of the Arbitration Ordinance, and the provisions of that Ordinance shall apply accordingly.

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 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, the provider 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 pay 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) A provider who presents an estimated claim for any good or service shall be required to present an accurate claim no later than ninety 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.

Apportionment of payments where service not received

46. (1) Where a service is 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.

(2) The provider shall—

- (a) be liable to make a full refund to the consumer, 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.

Provider purporting to act on a Bill of Sale

- 47.** (1) A provider commits an offence if he—
- (a) acts on the powers contained in a Bill of Sale of chattel pledged by a consumer; and
 - (b) employs any person other than a constable, or a bailiff to recover any or all of the chattels pledged in the Bill of Sale to the provider in the event of default in repayment of a loan.
- (2) A provider who commits an offence under subsection (1) shall, upon summary conviction be liable to a fine not exceeding five thousand dollars.
- (3) A provider commits an offence if he, 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, 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.

(4) A provider who commits an offence under subsection (3) shall, upon summary conviction be liable to a fine not exceeding one thousand dollars.

(5) The court may order a provider convicted of an offence under subsection (3) to pay the consumer an amount equal to ten times the market value of the chattels seized plus an amount of fifty dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.

(6) 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.

(7) A person commits an offence who—

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

(b) being a Bailiff, wrongfully seizes the chattels of a consumer.

(8) A person who commits an offence under subsection (7) shall upon summary conviction be liable to a fine not exceeding five thousand dollars.

(9) The Court may order a person convicted of an offence under subsection (8) to pay the consumer an amount equal to ten times the market value of the chattels seized plus an amount of fifty 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,

commits an offence and is liable on summary conviction to a fine of \$5,000.

Regulations

48. The Minister may make regulations for the purposes of giving effect to the provisions of this Ordinance.

Repeal

49. The Trade (Control of Supplies) Ordinance is repealed.

SCHEDULE

(Section 10(2)(a))

SUMMONS TO WITNESS

To :*(name of person summoned and his or her address, if known)* You are hereby summoned to appear before the Director of Consumer Affairs, at.....*(place)* on the.....day of ato'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)*.

PASSED by the House of Assembly this day of 2016.

.....
Tracey Parker
Clerk to the House of Assembly

.....
Robert Hall
Speaker

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the promotion of consumer interests in relation to the supply of goods and the provision of services. The Bill seeks to ensure that consumer rights are protected and enforceable.

THE BILL

Part I of the Bill contains clauses 1 to 3.

Clause 1 provides for the short title and commencement of the proposed legislation.

Clause 2 provided for the definition of the expressions used in the proposed legislation.

Clause 3 provides that the proposed legislation shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Part II of the Bill contains clauses 4 to 13 and deals with the administration of the proposed legislation.

Clause 4 provides for the appointment of a Director of Consumer affairs who shall perform the functions and duties assigned to the Director under the Ordinance.

Clause 5 sets out the functions of the Director which includes receiving, investigate and attempt to settle complaints of unfair business practices.

Clause 7 provides for complaints to be made to the Director either orally or in writing.

Clause 8 gives the Director the discretion to decide whether to undertake or continue an investigation or refuse to undertake or continue any investigation.

Clause 10 empowers the Director to summon persons to give evidence in relation to an investigation being conducted by him or to produce documents in that person's possession or under his control.

Clause 11 sets out the obligations of the persons summoned to attend and give evidence or produce documents before the Director.

Clause 13 provided that if the Director finds that a provider has engaged in conduct that contravenes any provision of the Ordinance he may make and order prohibiting a provider from engaging such conduct or he may conclude an arrangement for the discontinuance of such conduct, the refund of the price of the goods or service.

Part III of the Bill contains clauses 14 to 19 and address issues relating to product and service safety and provide for standard setting, notification of unsafe products and recall of defective products.

Clause 14 provides for the Minister may by order, *inter alia*, prohibit the importation or exportation of goods of any class or description of goods from or to any country, control the prices at which goods, or any class or description of goods may be sold whether by wholesale or retail and providing for the recall of certain goods which are dangerous or hazardous to safety.

The provision does not authorise the Minister to make an order regulating the exportation or importation of any goods if the exportation or importation of such goods is regulated under the provisions of any other Ordinance. For example, the Animal Health Ordinance, the Plant Health Ordinance, the Food and Drugs Ordinance.

Clause 15 provides that the Minister may issue a notice to the provider to recall the goods where it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person and that the provider has not taken satisfactory action to prevent the goods causing injury to any person.

Clause 16 makes it an offence for a provider to fail to comply with requirement and direction in the notice.

Clause 18 requires the Minister to enquire from providers whether the providers would like the Minister to hold a consultation in relation to a proposed recall before publishing a notice for the recall of goods.

Clause 19 provides exceptions in the case of danger to the public.

Part IV of the Bill sets out the duties of providers to consumers.

Clause 20 requires a provider to provide, information to the consumer concerning the goods being sold.

Clause 21 provides that a consumer shall at all times be entitled to check the weight, volume or other measurement of the goods sought to be purchased.

Clause 22 requires provider to give a receipt to a customer for goods or services purchased from the provider.

Clause 24 provides for payment of compensation to consumers for defective products where products have caused material losses, personal injury to consumers.

Clause 25 provides for the replacement or repair of goods, at no cost to the consumer, where a provider sell a consumer damaged goods

Clauses 26 and 27 provide for the return and exchange of defective goods or the refund of the purchase price.

Clause 28 provides for the return and exchange of faulty electrical goods or the refund of the purchase price.

Part V of the Bill contains provisions dealing with unfair business practices and prohibits or restricts commercial practices that are considered to be misleading, aggressive or unfair to the consumer. It also prohibits false, misleading or confusing advertising and other dubious forms of commercial communication.

Part VI of the Bill contains provisions relating to the enforcement.

Clause 40 provides that an inspector may for the purposes of enforcement of the Ordinance make test purchases of goods to ascertain whether safety provisions are being complied with.

Clause 41 empowers and inspector to enter premises, other than premises used exclusively as a dwelling house, to inspect goods found and to seize such goods, if necessary.

Clause 42 is an offence provision.

Clause 43 requires and an inspector to inform the person from whom goods were seized or purchased of the result of the test.

Clause 44 provides for compensation to be paid to the owner whose goods were seized, where the owner suffers loss by reason of the goods being seized or by reason that during the detention, the goods are lost or damaged or deteriorate, unless the owner is convicted of an offence under the Ordinance.

Part VII of the Bill contains miscellaneous provisions.