

A BILL

entitled

CONSUMER PROTECTION AMENDMENT ACT 2011

WHEREAS it is expedient to amend the Consumer Protection Act 1999;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Consumer Protection Act 1999 (the "principal Act") may be cited as the Consumer Protection Amendment Act 2011.

Amends section 11

2 Section 11 of the principal Act is amended—

- (a) by renumbering the section as subsection (1);
- (b) in paragraph (b)—
 - (i) by deleting the word "ignorance," in subparagraph (i) and substituting the words "mental disorder or impairment, age,";
 - (ii) by inserting, in subparagraph (ii) after the word "that", the words "the price to be charged will grossly exceed the estimated or quoted price, or that"; and
 - (iii) by deleting the full stop in subparagraph (ix) and substituting "; and";
- (c) by inserting after paragraph (b) the following—
 - "(c) an unconscionable act in respect of a particular transaction and, in determining whether or not an act is unconscionable, there may be taken into account that the person is—
 - (i) engaging in abusive language, or verbal or physical threats directed towards the consumer;
 - (ii) withholding from the consumer material information, or providing material information in terms which cannot be

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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;

- (iii) supplying and charging the consumer for consumer goods and services which were not part of the transaction without first obtaining the agreement of the consumer;
- (iv) 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;
- (v) placing a lien on property belonging to the consumer for the purpose of inducing the consumer to pay for the unauthorized supply of goods or services, either at the time the goods or services are supplied or at a later date.”; and

(d) by inserting after subsection (1) the following—

“(2) 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.”.

Amends section 12

3 Section 12 of the principal Act is amended—

(a) in subsection (2) by inserting after “who” the words “makes a consumer representation or”; and

(b) by inserting the following after subsection (3)—

“(4) Where a person is found guilty of engaging in an unfair business practice, the court may, in addition to the penalty imposed under subsection (3)—

(a) order such person to compensate the affected consumer and, for that purpose, may award any of the remedies provided under section 13(1) or (2); and

(b) in the case of an offence committed under section 11(b) or (c), award exemplary or punitive damages.

(5) Notwithstanding subsection (3), a person shall not be charged with an offence of unfair business practice under this section where such person—

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- (a) agrees to attempts made by the Executive Officer to effectively settle a complaint of unfair business practice as provided in section 6(4)(a);
- (b) complies with an order issued by the Executive Officer for the person to cease engaging in an unfair business practice as provided in section 14; or
- (c) complies with a written assurance of voluntary compliance under section 17.”.

Amends section 13

4 Section 13 of the principal Act is amended—

- (a) by repealing and replacing subsection (1) with the following—

“(1) Where a person induces a consumer to enter into an agreement, whether written, oral or implied, by an unfair business practice, the consumer may, subject to subsection (2), rescind the agreement and is entitled to any remedy that is available at law, including damages.”;

- (b) in subsection (3) by inserting after “11(b)” the words “or (c)”;
- (c) in subsection (4) by deleting “makes the consumer representation” and substituting “engages in an unfair business practice”; and
- (d) by repealing and replacing subsection (7) with the following—

“(7) A consumer may, within six months after the agreement referred to in subsection (1) is entered into, claim a remedy conferred by subsection (1) by giving notice of the claim in writing to the person who induced the consumer to enter into the agreement.”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Consumer Protection Act 1999 (the “principal Act”) to provide for an additional category of unfair business practice, i.e. an unconscionable act, and to make a number of consequential and housekeeping amendments.

Clause 1 provides a citation for the Bill.

Clause 2 seeks to amend section 11 of the principal Act (“Unfair business practices”).

Clause 2(a) renumbers section 11 as subsection (1) for the purpose of inserting a new subsection (2).

Clause 2(b)(i) amends the current section 11(b)(i) by deleting the word “ignorance” and expanding the list of the types of consumer with respect to whom an unconscionable consumer representation can be made to include consumers who have a mental disorder or impairment, or who may be at a disadvantage because of age.

Clause 2(b)(ii) amends the current section 11(b)(ii) making it an offence for a person to give an estimate or quote in respect of consumer goods or services which they know, or ought to know, will be grossly exceeded.

Clause 2(b)(iii) makes an editorial change to the current section 11(b) to allow for the insertion of a new paragraph (c).

Clause 2(c) inserts a new section 11(1)(c) so that an unconscionable act is deemed an unfair business practice.

Clause 2(d) inserts a new section 11(2) which provides a definition for the words “estimate” and “quote”.

Clause 3 seeks to amend section 12 of the principal Act (“Unfair business practices prohibited”).

Clause 3(a) amends section 12(2) as a consequence of the insertion of the new section 11(1)(c) so that a person who performs an unconscionable act is deemed to be engaging in an unfair business practice.

Clause 3(b) inserts new subsections (4) and (5). These are housekeeping amendments.

Subsection (4) empowers the court, in the case of a conviction, to order compensation, or to apply remedies under section 13. It also provides for exemplary or punitive damages where the unfair business practice is an unconscionable one.

Subsection (5) links the offences to the mediation process, the order to comply process, and the assurance of voluntary compliance process under sections 6, 14 and 17, respectively.

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Clause 4 seeks to amend section 13 of the principal Act (“Remedies”).

Clause 4(a) repeals and replaces section 13(1) of the principal Act as a consequence of the addition of the new section 11(c). The amendment replaces the term “consumer representation” with the term “unfair business practice” so that the subsection encompasses both a representation and an act.

Clause 4(b) amends section 13(3) providing for the court to award exemplary or punitive damages where a consumer was induced into entering an agreement because of an unconscionable act.

Clause 4(c) amends section 13(4) by replacing the term “consumer representation” with the encompassing term of “unfair business practice” so that persons performing an unconscionable act are jointly and severally liable with the person who entered into the agreement with the consumer.

Clause 4(d) makes a housekeeping amendment to section 13(7) to bring clarity and emphasis to the time limit in which a consumer may claim the remedies conferred by section 13(1).