

CHAPTER 4.**CONSUMER PROTECTION**

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An Act to provide for consumer protection legislation and for matters connected therewith.

Source:	33	TTC 1970
	33	TTC 1980
	P.L.	1991-131
	P.L.	1997-46
	P.L.	1997-48

§401. Short title.

This Chapter may be cited as the “Consumer Protection Act”. [33 TTC 1970, §351; 33 TTC 1980, §351, modified.]

§402. Interpretation.

In this Chapter:

(a) “person” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity;

(b) “trade” and “commerce” mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade of commerce directly or indirectly affecting the people of the Republic;

(c) this Chapter applies to all civil causes of action which accrued before the effective date of this Chapter upon which any suit is filed after such effective date, and to all civil causes of action which accrue on or after such effective date of this Chapter. [33 TTC 1970, §352; 33 TTC 1980, §352, modified; amended by P.L. 1991-131, §2; amended by P.L. 1997-46, §2.]

§403. Unlawful acts or practices.

The following unfair methods of competition and unfair or deceptive acts or practices in the

conduct of any trade of commerce are hereby declared to be unlawful:

- (a) passing off goods or services as those of another;
- (b) causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, uses, benefits, quantities, characteristics or certification of goods or services;
- (c) causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by another;
- (d) using deceptive representations or designations of geographic origin in connection with goods or services;
- (e) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
- (f) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (g) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (h) disparaging the goods, services, or business of another by false or misleading representation of fact;
- (i) advertising goods or services with intent not to sell them as advertised;
- (j) advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (k) making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;
- (l) engaging in any other conduct which similarly creates a likelihood of confusion of or misunderstanding;
- (m) engaging in any act or practice which is unfair or deceptive to the consumer;
- (n) causing likelihood of mistake, misunderstanding or confusion as to the safety or danger in the use or consumption of goods, products or consumables;
- (o) causing likelihood of mistake, misunderstanding or confusion as to the habit forming qualities of goods, products or consumables;
- (p) causing likelihood of mistake, misunderstanding or confusion as to unhealthful effects of the use of goods, products or consumables;
- (q) engaging in any act or practice which to the consumer's detriment, takes advantage of the lack of knowledge, ability, experience or capacity of the consumer to an unreasonable degree; or
- (r) breach of an express or implied warranty. [33 TTC 1970, §353; 33 TTC 1980, §353, modified; amended by P.L. 1997-46, §2.]

§404. Exemptions.

Nothing in this Chapter shall apply to:

- (a) actions or transactions carried out by the Government of the Marshall Islands, any branch thereof or any other governmental agency; or
- (b) acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee who did not have knowledge of the false, misleading or deceptive character of the

advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised product or service. [33 TTC 1970, §354; 33 TTC 1980, §354, modified.]

§405. Restraint of prohibited acts.

(1) Whenever the Attorney-General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared in Section 403 of this Chapter to be unlawful, and that proceedings would be in the public interest, he or his representative may bring a civil action in the name of the Republic against such person:

(a) to restrain by temporary or permanent injunction the use of such method, act or practice; and/or

(b) to recover on behalf of the people of the Marshall Islands or their heirs, all monies spent toward the purchase of goods, consumables, or services which are the subject of any method, act or practice declared in Section 403 of this Chapter to be unlawful, together with interest thereon at the rate of ten percent (10%) per annum compounded since the spending.

The notice for injunctive relief under (a) of this subsection must state generally the relief sought and must be served at least three (3) days before the hearing of the action. The action shall be brought in the High Court. The High Court is authorized to issue temporary injunctions to restrain and prevent violations of this Chapter and such injunctions shall be issued without bond.

(2) The Court may make such additional orders or judgments as may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice in this Chapter declared to be unlawful. The Republic may represent all persons in interest as a single group in the civil action authorized in subsection (1)(b) of this Section, and recover all monies and interest mentioned in subsection (1)(b) of this Section, for the group as a whole, using statistical measurements and valuation of the aggregate amounts spent by the group as a result of any practice declared unlawful in this Chapter. Any such monies recovered by the Republic shall be placed in a trust fund to be fairly administered and distributed to the individual members of the group by the applicable Cabinet Minister. [33 TTC 1970, §355; 33 TTC 1980, §355, modified; amended by P.L. 1997-48, §2.]

§406. Private and class actions.

(1) Any person who purchases, leases, uses or is affected by goods, products, consumables, or services primarily for personal, family or household purposes and thereby suffers loss of life or health or any other loss, as a result of the use or employment by another person of a method, act, or practice declared unlawful by Section 403 of this Chapter, may bring an action under the Rules of Civil Procedure in the High Court, to recover actual damages or \$100, whichever is greater. The Court may, in its discretion award punitive damages and may provide such equitable relief as it deems necessary or proper.

(2) Any person entitled to bring an action under Subsection (1) of this Section may, if the unlawful method, act or practice has caused similar injury to numerous other persons similarly situated and if they adequately represent such similarly situated persons, bring an action on behalf of themselves and other similarly injured and situated persons to recover damages as provided for in Subsection (1) of this Section. In any action brought under this Section, the Court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(3) Upon commencement of any action brought under Subsection (1) of this Section, the Clerk of the Courts shall mail a copy of the complaint or other initial pleading to the

Attorney-General and, upon entry of judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney-General.

(4) In any action brought by a person under this Section, the court may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs.

(5) Any permanent injunction, judgment or order of the Court made under Section 403 of this Chapter shall be prima facie evidence in an action brought under this Section that the respondent used or employed a method, act or practice declared unlawful by Section 403 of this Chapter. [33 TTC 1970, §356; 33 TTC 1980, §356, modified; amended by P.L. 1997-46, §2.]

§407. Nonnegotiability of consumer paper.

(1) If any contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or evidence of indebtedness of the buyer, such note, instrument or evidence of indebtedness shall have printed on the face thereof the words "consumer paper", and such note, instrument or evidence of indebtedness with the words "consumer paper" printed thereon shall not be a negotiable instrument.

(2) Notwithstanding the absence of such notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this Section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this Section. The assignee's liability under this Section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Failure to imprint the words "consumer paper" on such note, instrument or evidence of indebtedness shall subject the seller or other responsible person to appropriate civil and criminal sanctions as provided in this Chapter. [33 TTC 1970, §357; 33 TTC 1980, §357, modified.]

§408. Assurances of voluntary compliance.

In the administration of this Chapter, the Attorney-General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the Chapter from any person who has engaged in or is about to engage in such method, act or practice. Any such assurances shall be in writing and shall be filed with and subject to the approval of the High Court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney-General for further proceedings in the public interest, pursuant to Section 405 of this Chapter. [33 TTC 1970, §358; 33 TTC 1980, §358, modified.]

§409. Investigation authorized.

(1) When it appears to the Attorney-General that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this Chapter, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in such act or practice, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the

relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the High Court. [33 TTC 1970, §359; 33 TTC 1980, §35 modified.]

§410. Authority of Attorney-General to issue subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations.

To accomplish the objectives and to carry out the duties prescribed by this Chapter, the Attorney-General, in addition to other powers conferred upon him by this Chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations upon approval of the Cabinet shall have the force of law; provided, that none of the powers conferred by this Chapter shall be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further, that information obtained pursuant to the powers conferred by this Chapter shall not be made public or disclosed by the Attorney-General or his employees beyond the extent necessary for law enforcement purposes in the public interest. [33 TTC 1970, §360; 33 TTC 1980, §360, modified.]

§411. Service of notices, demands or subpoenas.

Service of any notice, demand or subpoena under this Chapter shall be made personally within the Republic, but if such cannot be obtained, substituted service therefore may be made in the following manner:

- (a) personal service thereof without the Republic;
- (b) the mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without the Republic of such person for whom the same is intended;
- (c) as to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil proceeding had been filed; or
- (d) such service as the High Court may direct in lieu of personal service within the Republic. [TTC 1970, §361; 33 TTC 1980, §361, modified.]

§412. Orders for enforcement of subpoenas or investigative demands.

(1) If any person fails or refuses to file any statement or report, to or obey any subpoena or investigative demand issued by the Attorney-General, the Attorney-General may after notice, apply to the High Court, and, after hearing thereon, request an order:

- (a) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;
- (b) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of the Republic or revoking or suspending the business permit in the

Republic of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(c) granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) Any disobedience of any final order entered under this Section by any court shall be punished as a contempt thereof. [33 TTC 1970, §362; 33 TTC 1980, §362, modified.]

§413. Civil and criminal penalties.

(1) Any person who violates the terms of an injunction issued under Section 405 of this Chapter shall forfeit and pay to the Government of the Marshall Islands a civil penalty of not more than \$10,000 per violation. For the purposes of this Section, the High Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney-General, acting in the name of the Republic, may petition for recovery of civil penalties.

(2) In any action brought under Section 405 of this Chapter, if the Court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by Section 403 of this Chapter, the Attorney-General, upon petition to the court, may recover, on behalf of the Republic, a civil penalty of not exceeding \$1,000 per violation.

(3) For the purposes of this Section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 403 of this Chapter. [33 TTC 1970, §363, 33 TTC 1980, §363.]

§414. Forfeiture of corporate franchise.

Upon petition by the Attorney-General, the High Court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under Section 405 of this Chapter. [33 TTC 1970, §364; 33 TTC 1980, §364, modified.]

§415. Consumer Protection Board.

(1) The Consumer Protection Board (hereinafter, "the Board") is hereby established.

(2) The Board shall have the following seven (7) members:

(a) the Minister of Health, who shall serve as Chairman of the Board;

(b) the Minister of Resources and Development, or the Minister's designee from within that Ministry;

(c) the Minister of Social Services, or the Minister's designee from within that Ministry;

(d) Attorney General, or his designee from within the Office of the Attorney-General;

(e) the Chairman of the Republic of the Marshall Islands Environmental Protection Authority, or the Chairman's designee from within the Authority; and

(f) two persons from the general public who shall be appointed by the Chairman, one of whom shall be the owner or manager of a local business.

(3) The members of the Board appointed pursuant to Paragraph (2)(f) of this Section shall serve for terms of three (3) years, and each may be reappointed for one additional term only. If the positions held by such members from the general public are vacant for any reason, the positions shall be filled for the remainder of the unexpired terms in the same manner as the original appointments.

(4) The members of the Board shall receive such compensation as may be determined by the

Cabinet for all reasonable and necessary expenses incurred in the performance of their official duties

(5) The Board may seek such outside assistance from consultants and other experts as required.

(6) The Board shall meet not less than four (4) times per year. The members shall be notified in writing by the Chairman or other person designated by the Board at least one week before the date of any such meeting.

(7) Subject to this Act and any other law, the Board shall determine its own by-laws, which shall provide for the quorum and the conduct of meetings; the appointment and duties of a Vice-Chairman and Secretary of the Board; and any other matters relating to the Board and its operations and procedures which it deems appropriate.

(8) The Board shall have the following functions:

(a) coordinate the consumer protection activities of all ministries, departments, agencies and branches of the national government, and of departments and agencies of local governments involved in consumer protection matters;

(b) assist and advise national and local agencies and officials to protect and promote the interests of consumers;

(c) conduct research and studies and take such action as is necessary and appropriate affecting the interests of consumers;

(d) study the operation of this Act, regulations promulgated under this Act and all other laws affecting consumers, and recommend new laws and amendments in the interests of consumers, as necessary;

(e) investigate reported or suspected violations of this Act or regulations promulgated in accordance with this Act, and refer such reported or suspected violations to the Office of the Attorney General for appropriate action;

(f) undertake activities, including the holding of conferences or presentations, to encourage business and industry to maintain high standards of honesty, fair business practices and public responsibility in the production, promotion and sale of consumer goods and services;

(g) provide information to the general public on consumer protection, including but not limited to consumer complaints and inquiries; provided that:

(i) consumer complaints may not be made available to the general public if the Board or the Office of the Attorney General is conducting an investigation or review of such complaints, or if the complaints are the subject of current civil litigation or other ongoing legal proceedings, or if the complaints have been referred to another government ministry, department or agency; and

(ii) consumer complaints may be made available to the general public in summarized form or with deletions and changes as the Board deems necessary in order to protect the identity of the complainant;

(h) appear and testify on behalf of consumers' interests before governmental commissions, departments and agencies, as necessary, including at public hearings involving bills affecting consumers' interests; and

(i) perform such other acts as may be necessary and appropriate in the interests of consumers and to give effect to the provisions of this Act. [added by P.L. 1991-131, §2.]

