



CONSUMER AFFAIRS

B E R M U D A

Promoting Confident Consumers and Responsible Traders

**The Nine Things You Should Know About
The New Amendments To
The Consumer Protection Act 1999**

September 2011

NINE THINGS YOU SHOULD KNOW

1. The words "Estimate and Quote" now have a legally binding definition.
 - a) An Estimate is a representation indicating the likely price that will be charged whereas a Quote is the actual price that will be charged.
 - b) Businesses will be held accountable for their estimates and quotes, under estimating will no longer be acceptable.
 - c) Businesses will have to prepare proper professional costing for goods and services.
2. Businesses will be in violation of the Act if they engage in aggressive behaviour towards a consumer. This is an action that is used to intimidate the consumer into complying with the businesses will. This behaviour is often carried out by those who solicit work door to door.
3. When entering into an agreement with a consumer for goods or services you cannot have an agreement that is unjust, extremely one-sided in favor of the business, taking advantage of a consumer who is in a position of weakness i.e. mentally impaired, illiterate etc.
4. Businesses are now required to provide the consumer with all material information pertaining to the goods or services being offered. This affords the consumer the right to make an informed decision based on all the facts.
5. Businesses will be required to obtain the consumer's permission before they can proceed with providing additional goods or services outside the parameters of the original agreement. For example if a client brings in a clock to have its arms repaired the technician cannot repair any other problems discovered without first getting the expressed permission of the consumer.
6. In addition to #4 businesses will no longer be allowed to place liens on the consumer's property for the purpose of inducing them into paying for unauthorized services or goods.

7. Businesses will have thirty days to refund consumers their money from the date of their request. The circumstance where this is applicable is where the business has failed to supply or substantially supply the goods or services under the agreed terms and conditions.

8. There are new penalties for businesses found guilty of committing an unconscionable representation or an unconscionable act.
 - a) The Courts can now order compensation or award remedies to a consumer.
 - b) The Courts can award exemplary or punitive damages against those businesses found guilty under the Act.

9. If a business induces a consumer into entering an agreement by means of an unfair business practice the consumer may rescind the agreement and within six months claim a remedy by giving notice to the business in writing.

THE ACT

The Amendments To The Consumer Protection Act 1999

Date Of Assent: The amendments became law on June 3rd 2011

Under Part III Section 11 of the principal Act entitled "Unfair Business Practices" the following amendments were made.

➤ **Word Replacement Clarification**

11(b)(i) The amendment deletes the word "ignorance" as it was considered that such a broad interpretation placed an unfair requirement on traders to know the level of a consumer's ignorance.

The amendment expands the list to include consumers who have a mental disorder or impairment, or who may be at a disadvantage because of age which are easily definable.

➤ **Estimate And Quote Definition**

11(b)(ii) The amendment makes 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.

11(2) Inserts a new section which provides a definition for the words “estimate” and “quote”; hereby legally defining that an estimate is the “likely” price to be charged whereas a quote means the “actual” price to be charged for goods and services.

➤ **A New Paragraph With Five New Offenses**

11(b)(iii) Make an editorial change to the current section 11(b) to allow for the insertion of a new paragraph 11(c). This new paragraph adds five new offenses to the Act.

New Offenses

11(c)(i) Inserts a new section so that an unconscionable act is deemed an unfair business practice. This includes engaging in abusive language, or behavior such as verbal and physical threats directed towards consumers;

11(c)(ii) Withholding material information which cannot be understood by the consumer particularly where persons are physically infirmed, mentally impaired, illiterate, their inability to understand the language or similar factors or where their age may result in an inability to understand. With respect to age the person may be a minor or a senior.

11(c)(iii) Supplying and charging consumers for goods and services which were not part of the original agreement without first obtaining the agreement from the consumer.

11(c)(iv) Failing to make a full 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 agreement.

11(c)(v) Placing a lien on consumers property for the purpose of inducing the consumer to pay for the unauthorized supply of goods or services.

Under Part III Section 12 of the principal Act (“Unfair business practices prohibited”) the following amendment was made with two new additions:

12(2) A person who makes, under section 11(a)(b)(c) a consumer representation or performs any act shall be deemed to be engaging in an unfair business practice.

➤ **New Additions**

12(4) Where a person is found guilty of engaging in an unfair business practice, the Court may, in addition to imposing a penalty under subsection 12(3) make an order for the payment of compensation for the loss suffered by the consumer.

12(5) Removes ambiguity and clearly provides procedures to be followed by the Executive Officer before initiating any proceedings against a person who she believes has committed an unfair business practice. As it currently stands, the principle Act can be interpreted as requiring the EO to bring an action immediately where she believes a person has engaged in an unfair business practice.

Under Part III Section 13 of the principal Act (Remedies) the following amendments were made:

➤ **Consumer Remedies**

13(1) 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.

13(3) 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.

13(4) 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.

13(7) makes a housekeeping amendment to section 13(7) to bring clarity and emphasis to the time limit (six months after the agreement) in which a consumer may claim the remedies conferred by section 13(1).