

Consumer Protection (Fair Trading) Bill

Bill No. 00/2002

Read the first time on

2002.

CONSUMER PROTECTION (FAIR TRADING) ACT 2002

(No. of 2002)

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement
 2. Interpretation
 3. Application
 4. Meaning of unfair practice
 5. Circumstances surrounding unfair practice
 6. Right to sue for loss
 7. Powers of court
 8. Right to cancel certain contracts within cancellation period
 9. Limitation period
 10. No contracting out
 11. Rights transferred
 12. Preservation of other remedies
 13. Exemption from liability for advertisers
 14. Parol evidence rule abolished
 15. Interpretation of documents
 16. Regulations
 - First Schedule — Excluded Transactions
 - Second Schedule — Specific Unfair Practices
-

A BILL

intituled

An Act to protect consumers against unfair practices and for matters connected therewith.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

5 **Short title and commencement**

1. This Act may be cited as the Consumer Protection (Fair Trading) Act 2002 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“consumer” means an individual who —

- 5 (a) receives or has the right to receive goods or services from a supplier as a result of a purchase, lease, gift, contest or other arrangement, but does not include an individual who intends to sell the goods after receiving them;
- 10 (b) has a legal obligation to compensate a supplier for goods that have been or are to be supplied to another individual and the other individual does not intend to sell the goods after receiving them; or
- (c) has a legal obligation to compensate a supplier for services that have been or are to be supplied to another individual;

“consumer transaction” means —

- 15 (a) the supply of goods or services by a supplier to a consumer as a result of a purchase, lease, gift, contest or other arrangement; or
- 20 (b) an agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement;

“flat” means a horizontal stratum of any building or part thereof, whether the stratum or part is on one or more levels or is partially or wholly below the surface of the ground;

25 “goods” means —

- (a) any personal property that is used or ordinarily used primarily for personal, family or household purposes;
- (b) a voucher; or
- (c) residential property;

30 “material fact” means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction;

“residential property” means any house, flat or other premises which is permitted to be used pursuant to any written law as a dwelling-house and any such house, flat or other premises which is in the course of being constructed;

5 “services” means any service offered or provided primarily for personal, family or household purposes, including —

(a) a service offered or provided that involves the addition to or maintenance, repair or alteration of goods or any residential property;

10 (b) a membership in any club or organisation if the club or organisation is a business formed to make a profit for its owners; and

(c) the right to use property under a time share contract;

15 “supplier” means a person who, in the course of the person’s business —

(a) provides goods or services to consumers;

(b) manufactures, assembles or produces goods;

(c) promotes the use or purchase of goods or services; or

20 (d) receives or is entitled to receive money or other consideration as a result of the provision of goods or services to consumers, and includes any salesperson, employee, representative or agent of the person;

25 “time share contract” means a contract in which an individual acquires the right to use any type of real or personal property that can be used as accommodation, whether or not it is located in Singapore —

(a) for a period of time of less than one year during an interval specified in the contract; and

30 (b) as part of a plan that provides for the use of the property to circulate among persons participating in the plan;

“unfair practice” means an unfair practice within the meaning of section 4;

“voucher” means any document that purports to give the holder of the document the right to obtain goods or a service or the right to obtain goods or a service at a discounted or reduced price.

Application

5 **3.**—(1) This Act applies to any consumer transaction or proposed consumer transaction involving goods or services other than a transaction or proposed transaction or type or kind of transaction or proposed transaction specified in the First Schedule.

10 (2) The Minister may, by order published in the *Gazette*, amend the First Schedule.

(3) This Act applies to any consumer transaction or proposed consumer transaction —

- (a) in which the supplier or consumer is a resident of Singapore; or
- 15 (b) in which the offer or acceptance is made in or is sent from Singapore.

Meaning of unfair practice

4.—(1) It is an unfair practice for a supplier, in a consumer transaction or proposed consumer transaction involving goods or services, to —

- 20 (a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) make a false claim;
- (c) take advantage of a consumer if the person knows or should reasonably be expected to know that the consumer —
 - (i) is not in a position to protect his or her own interests; or
 - 25 (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or proposed transaction or any matter related to the transaction; or
- (d) without limiting the generality of paragraphs (a) to (c), do anything specified in the Second Schedule.

30 (2) The Minister may, by order published in the *Gazette*, amend the Second Schedule.

Circumstances surrounding unfair practice

5.—(1) An unfair practice may occur —

(a) before, during or after a transaction involving goods or services;
or

5 (b) whether or not a transaction involving goods or services takes place.

(2) An unfair practice may consist of a single act or omission.

(3) In determining whether or not a person has engaged in an unfair practice, the reasonableness of the actions of that person in those
10 circumstances is to be considered.

Right to sue for loss

6.—(1) A consumer who has suffered a loss as a result of an unfair practice may commence an action in a court of competent jurisdiction against a supplier.

15 (2) A claim under subsection (1) shall —

(a) for the purposes of the Subordinate Courts Act (Cap.321) be deemed to be an action founded on contract; and

(b) for the purposes of the Small Claims Tribunals Act (Cap.308) be deemed to be a claim relating to a dispute arising from a contract
20 for the sale of goods or the provision of services, as the case may be.

Powers of court

7.—(1) Without prejudice to any other powers of the court to grant relief, the court may in any proceedings where the court finds that a
25 supplier has engaged in an unfair practice —

(a) order restitution of any money, property or other consideration given or furnished by the consumer;

(b) award the consumer damages in the amount of any loss suffered because of the unfair practice;

30 (c) make an order of specific performance against the supplier;

(d) make an order directing the supplier to repair goods or provide parts for goods; or

(e) make an order varying the contract between the supplier and the consumer.

5 (2) Where the court finds that an unfair practice has occurred, the court shall, in making an order under this section, have regard to whether or not the consumer made a reasonable effort —

(a) to minimise any loss resulting from the unfair practice; and

10 (b) to resolve the dispute with the supplier before commencing the action.

Right to cancel certain contracts within cancellation period

8.—(1) Where a consumer —

(a) has entered into a contract to which this section applies; and

15 (b) within the prescribed cancellation period the consumer gives notice of cancellation to the supplier, or any other person previously notified by the supplier to the consumer as a person to whom notice may be given,

the contract shall be treated as if it had not been made.

20 (2) For the purposes of this section, the Minister may make regulations prescribing —

(a) the types of contracts to which this section applies;

(b) the cancellation period for a contract to which this section applies;

25 (c) the manner in which notices of cancellation may be properly given;

(d) any notices that the supplier must give to the consumer and the manner in which such notices may be properly given; and

(e) the effect of the cancellation on any related contract.

Limitation period

9.—(1) Subject to subsection (2), no proceedings under this Act shall be commenced later than 2 years from the date of the occurrence of the last material event on which the proceedings are based.

5 (2) No proceedings arising from a cancellation of a contract pursuant to section 8 shall be commenced later than 2 years from the date of cancellation of the contract.

No contracting out

10 10.—(1) The provisions of this Act shall prevail notwithstanding any agreement to the contrary and any term contained in a contract is void, if and to the extent that it is inconsistent with the provisions of this Act.

(2) Any waiver or release given of any right, benefit or protection conferred under this Act shall be void.

15 (3) Subsections (1) and (2) do not apply to any release made by a person in settlement of a dispute.

Rights transferred

20 11. Where, other than in the course of business, an individual, as heir or assignee of a consumer, receives goods or services, that individual has the same rights as the consumer to seek and obtain redress from the supplier under this Act.

Preservation of other remedies

12. Nothing in this Act restricts, limits or derogates from any right or remedy that a consumer may have apart from this Act.

Exemption from liability for advertisers

25 13. A person who, on behalf of a supplier, prints, publishes, distributes, broadcasts or telecasts an advertisement in good faith and in his ordinary course of business shall not be liable under this Act in respect of any statement, representation or omission in that advertisement.

Parol evidence rule abolished

14. Notwithstanding sections 93 and 94 of the Evidence Act (Cap.97),
parol or extrinsic evidence establishing the existence of an express
warranty is admissible in any action between a consumer and a supplier
5 even though it adds to, varies or contradicts a written contract.

Interpretation of documents

15. If a consumer and a supplier enter into a consumer transaction
and —

- 10 (a) all or any part of the transaction or contract is evidenced by a
document provided by the supplier; and
- (b) a provision of the document is ambiguous,
the provision must be interpreted against the supplier.

Regulations

16.—(1) The Minister may make such regulations as may be necessary
15 or expedient for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister
may make regulations —

- 20 (a) exempting any class of supplier of goods or services or any class
of goods or services or transactions involving goods or services
from the application of this Act or any provision of this Act and
imposing conditions for that exemption;
- (b) prescribing information that must be part of a representation
made by a supplier or class of suppliers with respect to any
transaction or class of transactions involving goods or services;
25 and
- (c) prescribing anything that may be prescribed under this Act.

FIRST SCHEDULE

Section 3(1)

EXCLUDED TRANSACTIONS

This Act does not apply to any of the following transactions or proposed
5 transactions:

- (a) acquisition of an estate or interest in any immovable property (but not including any lease of residential property granted in consideration of rent);
- (b) financial investments;
- (c) transactions and proposed transactions (but not including any lease of
10 residential property granted in consideration of rent) —
 - (i) the value of which exceeds \$20,000; or
 - (ii) where the amount of the compensation referred to in paragraphs (b) and (c) of the definition of “consumer” in section 2 exceeds \$20,000;
- (d) in the case of any lease of residential property granted in consideration of
15 rent, where the annual rent payable by the consumer exceeds \$20,000 (referred to as the “annual rent limit”) or the monthly rent payable by the consumer exceeds one-twelfth of the annual rent limit.

20

SECOND SCHEDULE

Section 4(1)(d)

SPECIFIC UNFAIR PRACTICES

- 1. Representing that goods or services have sponsorship, approval, performance
25 characteristics, accessories, ingredients, components, qualities, uses or benefits that they do not have.
- 2. Representing that goods or services are of a particular standard, quality, grade, style, model, origin or method of manufacture if they are not.
- 3. Representing that goods are new or unused if they are not or if they have deteriorated or been altered, reconditioned or reclaimed.
- 30 4. Representing that goods have been used to an extent different from the fact or that they have a particular history or use if the supplier knows it is not so.

5. Representing that goods or services are available or are available for a particular reason, for a particular price, in particular quantities or at a particular time if the supplier knows or can reasonably be expected to know it is not so, unless the representation clearly states any limitations.
- 5 6. Representing that a service, part, repair or replacement is needed or desirable if that is not so, or that a service has been provided, a part has been installed, a repair has been made or a replacement has been provided, if that is not so.
7. Representing that a price benefit or advantage exists respecting goods or services where a price benefit or advantage does not exist.
- 10 8. Charging a price for goods or services that is substantially higher than an estimate provided to the consumer, except where the consumer has expressly agreed to the higher price in advance.
9. Representing that a transaction involving goods and services involves or does not involve rights, remedies or obligations where that representation is deceptive or misleading.
- 15 10. Representing that a person has or does not have the authority to negotiate the final terms of a transaction involving goods or services if the representation is different from the fact.
11. Taking advantage of a consumer by including in a consumer agreement terms or conditions that are harsh, oppressive or excessively one-sided.
- 20 12. Taking advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving goods or services.
13. Representing in relation to a voucher that another supplier will provide goods or services at a discounted or reduced price if the supplier making the representation knows or ought to know that the other supplier will not do so.
- 25 14. Making a representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or promotion
15. Representing that a particular person has offered or agreed to acquire goods and services whether or not at a stated price if they have not.
- 30 16. Representing the availability of facilities for repair of goods or of spare parts for goods if that is not the case.
17. Offering gifts, prizes or other free items in connection with the supply of goods or services if the supplier knows or ought to know that the items will not be provided or provided as offered.
- 35 18. Representing that goods or services are available at a discounted price for a stated period of time if the supplier knows or ought to know that the goods and services will continue to be so available for a substantially longer period.

19. Representing that goods or services are available at a discounted price for a particular reason that is different from the fact.

20. Using small print to conceal a material fact from the consumer or to mislead a consumer as to a material fact, in connection with the supply of goods or services.

EXPLANATORY STATEMENT

5

EXPENDITURE OF PUBLIC MONEY

10

T:/Fair Trading Act/Consumer Protection Bill.1 (15.10.02)

