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NEGOTIATING MANDATE

CONSUMER PROTECTION BILL [B19-2008]

The Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) deliberated on the Consumer Protection Bill [B19-2008] (the Bill).

After deliberation, the Committee supports the principles underlying the Bill, taking into account the observations of the Committee as contained in the attached report.

The permanent delegate representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and a mandate to negotiate in favour of the Bill.

HON. PE PASHA
CHAIRPERSON: PORTFOLIO
COMMITTEE ON AGRICULTURE
AND LAND ADMINISTRATION;
ECONOMIC DEVELOPMENT AND PLANNING

DATE

20/06/2008

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND ADMINISTRATION; ECONOMIC DEVELOPMENT AND PLANNING ON THE CONSUMER PROTECTION BILL [B19-2008]

1. Introduction

The Consumer Protection Bill (the Bill) was referred to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) for consideration and with the responsibility to report back its recommendations to the House.

2. Background

Various developments over the past few years have indicated that consumer protection legislation needed an overview. These include discriminatory and unfair market practices; proliferation of low quality and unsafe products; lack of awareness of rights; limited redress; inadequate protection for consumers and weak enforcement capacity.

3. Objectives of the bill

The Bill seeks to:

- Repeal several laws and replace them with a single Consumer Protection Act, as set out in clause 121 of the Bill;
- Make consequential amendments to various other Acts;
- Establish a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible;
- Promote fair business practices by protecting consumers from unfair, unreasonable/improper trade practices and deceptive, misleading, unfair or fraudulent conduct;
- Promote social, economic and environmental responsibility in consumer markets;
- Provide for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions;
- Provide for related incidental matters.

4. Method of work

The Speaker referred the Bill to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning for consideration. Consequently the Committee was briefed by the permanent delegate representing the Province of Mpumalanga in the NCOP on 5 June 2008.

In attendance of the briefings were Officials from the Consumer Affairs Directorate of the provincial Department of Economic Development and Planning (DEDP) and the National Department of Trade and Industry (DTI).

Copies of the Bill were delivered to the municipalities where the public hearings were conducted. Municipalities were requested to assist in circulating the bills to the public. No public education was conducted on the Bill due to the short amount of time to prepare for the public hearings Public Hearings were conducted as follows:

DATE	DISTRICT	VENUE	ATTENDANCE
12/06/2008	Ehlanzeni Region	Clau-Clau Community Hall; Mbombela Local Municipality	187
12/06/2008	Ehlanzeni Region	Mashishing, Roman Catholic Church Hall; Thaba Chewu Municipality	7
12/06/2008	Nkangala Region	Waterval Boven ,Paul Nkosi Community Hall (Mgwenya Location); Emakhazeni Local Municipality	100

The Honourable Members were deployed at the various public hearings and clearly explained the Bill to those present. The officials from the Department of Economic Development and Planning were also in attendance at the public hearings and availed themselves to answer questions about the Bill. The members of the public expressed satisfaction with the Bill and that it sought to protect consumers in our country.

Despite the poor attendance at the Mashishing public hearing in Ehlanzeni region, the Bill was explained to those present and they were invited to submit written comments on the Bill to the Committee

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before 18 June 2008. Subsequently, the Committee considered and adopted the public hearing report on 18 June 2008.

5. Public Inputs and Observations

The members of the public at the hearings raised the following issues:

- Every Supplier must use a language that can be understood by a consumer when he/she explains a product or markets a product and/or when they provide a service to consumers.
- The Government must ensure that all the foreign products are subjected under the norms and standards of SABS before they are sold to the South African consumers/markets.
- Even after the 15 days cooling off period, consumers should be entitled to return goods of poor quality to the supplier
- The Bill should be based on the principles and values of the Constitution especially on the right to access to information.
- The contract should be in a language that a consumer understands.
- Consumer Inspectors should be accessible and begin to work as soon as possible.
- Chapter 5: Part B of the Bill should also empower either the Local Council or District Council to exercise powers of the National Consumer Commission.
- Regional Consumer offices should be closer to the people and rural communities in particular.

5. Committee Observations

During the deliberations on the Bill, the Committee observed that the Bill has been drafted in such a way that it is consistent with the values and principles of the Constitution of the Republic of South Africa. Certainly the Bill protects the rights and interests of the Consumers. Above all Civil Society will have people to represent them in order to alleviate the problem of high attorneys' fees.

The Committee emphasized that the issues of Tribunals will also be attended to in terms of the Bill. For instance, the Minister will promulgate regulations that will provide guidelines for the functioning of the Commission and further indicate as to how it will involve the

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Local Council/ District Council as a way of promoting co-operative governance.

The Bill does promote and encourage public awareness through consumer education so that consumers know and exercise their rights effectively.

The public was reassured by the Committee that every country that imports goods to South Africa does test the quality of the products. South African authorities also do conduct their own quality tests on the imported products.

The 15 days cooling off period is guaranteed in terms of the Bill and consumers are allowed to revoke a contract if not satisfied with the product itself or finds an affordable product.

From the comments made by the Department of Economic Development and Planning, the Committee notes that section 83 and 84 of the Bill does take into account the National and Provincial Co-operation. This gives distinctive meaning to the Concurrent Legislative function on Consumer Protection in terms of Schedule 4 of the RSA Constitution (108 of 1996).

The Bill should cater for the clear definition of roles of the Public Protector and the Consumer Protection Office, so as not to have a duplication.'

6. Recommendations

The Committee examined the Consumer Protection Bill [B19-2008] and supports the principles underlying it.

The Committee recommends that the delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) be conferred with authority and a mandate to negotiate in favour of the Bill, taking into account the observations and inputs noted above.



Hon. PE Pasha
Chairperson: Portfolio Committee on
Agriculture & Land Administration;
Economic Development & Planning

20/06/2008
Date



ISISHAYAMTHETHO SAKWAZULU-NATAL

KWAZULU-NATAL WETGEWER

KWAZULU-NATAL PROVINCIAL LEGISLATURE

TO: THE CHAIRPERSON,

SELECT COMMITTEE ON ECONOMIC
AND FOREIGN AFFAIRS

NEGOTIATING MANDATE

PROVINCE : KWAZULU-NATAL

BILL : CONSUMER PROTECTION BILL
[B19 – 2008]

PROVINCIAL PROCESS :

Provincial Portfolio Committee/s : Finance and Economic Development
Portfolio Committee

Portfolio Committee meeting date/s : Tuesday, the 24th of JUNE 2008

Provincial NCOP meeting date/s : Tuesday, the 24th of JUNE 2008

Consultation : Parliamentary Legal Advisors, Special &
Permanent Delegates

VOTE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:

The Provincial Standing Committee on National Council of Provinces Matters met today, Tuesday, the 24th of June 2008, to consider the Consumer Protection Bill [B19-2008]

The following comments and amendments were proposed and considered on the Bill:

GENERAL COMMENTS

1. The Bill is *pro-consumer* and is to be welcomed.
2. The *costs of implementation of the Bill* may ultimately be passed onto the consumer. Increased product or service costs may be the trade-off for the increased protections afforded under the Bill, such as the newly introduced no-fault liability for damage caused by goods (see clause 61). Suppliers will need to have adequate product liability insurance in place. Increased exposure to product liability is likely to lead to a rise in insurance premiums. Improved quality control and production methods will have cost implications. Non-profit organizations are also subject to the effect of this provision. For example, Blood Transfusion Services may be exposed to liability for blood and blood products, where for example, blood is HIV infected and transfused to a patient. This may affect the financial viability of these agencies and the State may be required to stand guarantee for such exposure.
3. The Bill may have some unintended consequences. *Small businesses* in particular may face administrative and financial burdens in complying with the provisions of the Bill. For example, the inevitable increase in insurance premiums due to the strict liability provisions of clause 61 of the Bill may impact on the financial viability of small businesses. A further increase in costs may be brought about by the clauses relating to business names (clauses 79 to 81). A business that trades under a name other than a registered company or close corporation name may have to change its name in order to comply with the Bill, which brings about associated costs.
4. Instead of providing for *accessible consumer justice*, the institutional structures created in the Bill may act as a barrier. The structures create the opportunity for extensive time delays, forum shopping, duplication and

confusion as to which forum should be used. On reading section 69 it is very difficult to understand which forum to approach for what relief. The parties may go to the Tribunal, an ombud, a Consumer Court, an ordinary Court or another dispute resolution agency. The process is complicated. The composition, powers and duties of some of the statutory institutions is not clear. There is also concurrent jurisdiction between the provinces and the Commission. This leads to unnecessary duplication. Parties may use voluntary bodies and in addition, still use the statutory bodies. Agreements concluded by alternate dispute resolution in clause 70 have to be enforced via the High Court. This makes the process expensive for the complainant. Except for the limit on the referral period for complaints to the Tribunal or a consumer court (clause 116), the Bill fails to stipulate other referral periods. The Bill does not cater for consumer agreements which expressly provide for dispute resolution through arbitration.

5. Clause 47 (*Over-selling and over-booking*) will be welcomed by consumers. It obviously applies to airlines which deliberately overbook, resulting in passengers being bumped off the flight. The airline will be exposed to liability for consequential damages and economic harm. However, this may lead to inflexibility in bookings – the ticket will be for a specific flight only and is lost if not used.
6. The word "person" is used in many instances where the word "supplier" or "consumer" would be more accurate. Also, the words "prospective consumer", "potential consumer" and "individual" are used in the Bill, but it is not clear when a consumer would be considered to be any of these.
7. Consumer protection bodies should be established at municipalities to enable easy access.
8. Education on consumer rights is critical. After the Bill has been enacted,

an extensive public education campaign on consumer rights must be embarked upon.

PROPOSED AMENDMENTS

1. **Clause 1 - Definitions**

- (a) Amend the definition of "**consumer court**" by the deletion of the words "a body of that name, or" on page 9 in line 20.

The establishment of courts is a national competence. Provincial legislation cannot establish a consumer "court" as provided for the Bill.

- (b) The definition of "**direct marketing**" is too wide. It will for example include advertising inserts placed in a magazine or advertising on a website. This will make clause 16 (cooling-off right) applicable to a sale concluded as a result of such marketing, which may lead to abuse. Business will stop utilizing these mediums to curb unnecessary risk. This is an unintended consequence.
- (c) The definition of "**franchise agreement**" excludes motor dealer franchises, as it contemplates a franchisee paying a consideration for taking on the franchise. Motor dealers do not pay any consideration to the franchisor.

Amend the definition by the deletion of the words "*to be paid or paid*" in paragraph (a) of the definition on page 9 in line 57.

- (d) The definition of "**service**".

Amend sub-paragraph (i) of paragraph (c) of the definition by inserting the

words "and/or intermediary services" immediately after the word "advice" on page 12 in line 28.

"Advice" that is subject to the Financial Advisory and Intermediary Services Act is excluded. However, under FAIS, a registered financial services provider may render advice and/or intermediary services. "Intermediary services" thus still fall within the ambit of the Bill. It is proposed that the definition be amended to also exclude intermediary services, so as to avoid duplication of legislation.

2. Clause 17 – Consumer's right to cancel advance reservation, booking or order

Can sub-clause (5) be amended to include other reasonable circumstances beyond the control of the consumer, subject to the consumer carrying the burden of proof?

3. Clause 19 – Consumer's rights with respect to delivery of goods or supply of service

Sub-clause (2) implies that if the supplier is unable to deliver the goods on time, the consumer may cancel the contract. This may be impractical where, for example, goods are imported and delays are unavoidable. It is proposed that a similar exclusion provided for under clause 47(5) apply, namely that the supplier be protected where the failure to deliver was due to circumstances beyond their control, subject to the delay being for a reasonable period.

4. Clause 23 – Disclosure of price of goods and service

Correct the typographical error by the substitution of the third "of" in line 39 on page 27 with "for".

5. Clause 56 – Implied warranty of quality

Clause 56 provides for a 6-month warranty on new goods, whereas clause 57 provides for a 3-month warranty on new parts fitted as repairs. This appears to be an anomaly.

6. Clause 57 – Warranty on repaired goods

Amend sub-clause (1) by the insertion of the words "supplied and" immediately before the word "installed" on page 47 in line 10.

This is to exclude liability of a supplier where the consumer requests the supplier to fit a part supplied by the consumer.

7. Clause 100 – Compliance notices

There appears to be no provision permitting a supplier to respond to allegations before a compliance notice is issued. This is contrary to the rules of fair and just administrative action and is not adequately addressed by the subsequent right of review to the Tribunal under clause 101.

8. Clause 109 – Offences relating to Commission and Tribunal

Delete the word "Commission" in the heading on page 65 in line 30.

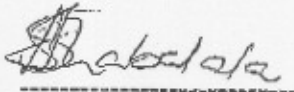
The content of the clause does not relate to the Commission.

9. Clause 119 – Proof of facts

Are presumptions of fact in criminal proceedings constitutional?

The Committee unanimously agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the Bill provided that the above comments and proposed amendments are considered and consolidated in the Bill.

PROVINCIAL ENDORSMENT



Ms L F Shabalala
CHAIRPERSON :
KWAZULU-NATAL STANDING COMMITTEE ON
NATIONAL COUNCIL OF PROVINCES MATTERS

Tuesday, the 24th June 2008

DATE



Committee Services

FREE STATE LEGISLATURE

TOURISM, ENVIRONMENTAL AND ECONOMIC AFFAIRS COMMITTEE

*Our references,
Ons verspreiding,
Telefaxo ya rona.*

Report on the negotiating mandate regarding Consumer Protection Bill [B19-2008]

1. Terms of Reference

The Consumer Protection Bill [B19 – 2008] has been referred to the Tourism, Environmental and Economic Affairs Portfolio Committee by the Speaker.

2. Briefing

(1) On the 4 June 2008, Mr. J. Modiba, Official from Department of Trade and Industry briefed the Portfolio Committee on the content of the Bill.

(2) Advocate Malakoane, Assistant Legal Advisor of the Free State Legislature briefed the Portfolio Committee on the legal substance and effects of the Bill.

3. Consultation

The Portfolio Committee held the Public Hearings on 12, 13 and 14 June respectively in all five districts of the Free State Province.

4. Consideration

The Portfolio Committee considered the Bill, inputs and information received. The Portfolio Committee noted the inputs by the general public and amongst others noted that:

1. The Bill does not make provision for the case where airtime is transferred into a consumer's cell phone without his/her consent. (It was noted that this point should be included into the Bill under Clause 21 "Unsolicited goods or services");

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2. Undertakers constantly move to other areas or shut down businesses and disappear, as a result, members of their funeral schemes forfeit their money;
3. Micro-lenders abuse people because they hold on to consumer's ID's and bank cards and police do not know how to deal with that situation.

5. Resolutions

The Committee resolved that:

Authority be conferred to the Free State Delegation, to vote for the adoption of the Bill with aforementioned inputs and considerations.



Mr. M. P. Nketu: Chairperson
Tourism, Environmental and Economic Affairs Portfolio Committee
FREE STATE LEGISLATURE
24 June 2008