

North-West Frontier Province Consumers Protection Act, 1997.

THE NORTH-WEST FRONTIER PROVINCE
CONSUMERS PROTECTION ACT, 1997
N.W.F.P ACT NO. VI OF 1997.

AN

ACT

To provide for promotion and protection
of the interest of consumers .

Preamble

WHEREAS it is expedient to provide for healthy growth of fair commercial practices, the promotion and protection of legitimate interests of consumers and speedy redressal of their complaints and matters arising out of or connected therewith.

It is hereby enacted as follows:

Part-1

Preliminary

1. Short title, extent, Commencement and application

(i) This Act may be called the North-West Frontier Province Consumers Protection Act, 1997.

(ii) It shall extend to whole of the North-West Frontier Province.

(iii) It shall come into force at once.

(iv) Save as otherwise expressly exempted by Government through a notification, this act shall apply to all goods and services.

2. Definitions

In this Act, unless there is any thing repugnant in the subject or context,

(a) "Authority" means the District Magistrate of the District concerned.

(b) "Complainant" means:

(i) a consumer;

(ii) a voluntary consumer's association subject to such restrictions as may be prescribed; and

(iii) Government, concerned Council, concerned Civic Development Authority or a local body and any person or agency authorized by the aforesaid on their behalf to lodge complaint before the Authority.

(c) "Consumer" means any person who:-

(i) buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or

(ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.

(d) "Council" means a Consumer Protection council, established under Section-8;

(e) "Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which, in relation to the goods, is required to be maintained by or under any law for the time being in force;

(f) "Deficiency" means a deficiency or shortcoming in the standard of performance, quality and nature of a service which has been undertaken by a person providing the service to a consumer in pursuance of a contract or otherwise or is required to be maintained by or under any law while providing a particular service;

(g) "Goods" means goods as defined in the Sale of Goods Act, 1930 (III of 1930);

(h) "Government" means the Government of North-West Frontier Province;

(i) "Laboratory" means a laboratory or organization recognized by Government including the Federal Government and includes any such laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by Government including Federal Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

(j) "Manufacturer" includes a person who: -

(i) makes or manufactures any goods or parts thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself; or

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself;

Explanation :- A branch office of a manufacturer shall not be deemed to be different manufacturer even though an assembly operation, distribution and sale of goods is carried out at such branch office;

(k) "Notification" means a notification published by rules made under this Act;

(l) "Prescribed" means prescribed by rules made under this Act;

(m) "Section" means a section of this Act.

(n) "Services" includes services of any description which are made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any other form of energy, boarding or lodging, entertainment, medicine, education, construction work, amusement, catering, security, or purveying news or other information and similar other services, but does not include the rendering of any service free of charge or under the contract of personal services; and

(o) " Unfair trade practice" means a trade practice which a person for the purpose of sale, use or supply of any goods or provision of any service or for their promotion, adopts one or more of the following practices, causes loss or injury through hoarding, black-marketing, adulteration, selling of expired drugs, food items and commodities unfit for human consumption, or charging for the goods and services in excess of the price fixed by an authority authorized to do so under any law for the time being in force or in furtherance of such sale, use or supply makes any statement, whether orally or in writing or by chalking on walls or through sign-boards or neon-sings or by distributing pamphlets or by publication in any manner including electronic media, by

(i) falsely representing that the goods or, as the case may be, services are of a particular standard, quality, quantity, grade, composition, model, style or mode;

(ii) falsely representing any rebuilt, second-hand, renovated, reconditioned or old goods as new goods;

(iii) falsely representing that the goods or, as the case may be, services have sponsorship or approval of the competent agency or authority or possesses specified characteristics, performance, accessories, use or benefits which such goods or services do not have;

(iv) falsely representing that the goods or services offered fulfill the prescribed standard fixed by local or international authorities;

(v) giving misleading representation of the need for, or the usefulness of any goods or services;

(vi) falsely giving to the public any warranty or guarantee of the performance, specification, required ingredients, efficacy or length of life of a product or any goods that is not based on an adequate or proper tests thereof;

(vii) falsely offering for sale or on lease any premises, house, apartment shop or building with specified facilities or with the promise to deliver possession thereof within a specified period or without any escalation in price or by falsely representing that such premises, house, apartment shop or building is being sold, built or constructed in accordance with the approved plans, specification and approval of the concerned authorities;

(viii) misleading the public concerning the price at which a product or products or goods or services have been or are ordinarily sold or provided;

(ix) giving false or misleading facts regarding facilities available in the private educational institutions or falsely representing that such institutions have proper approval of the concerned authorities or affiliated with foreign organizations;

(x) falsely representing for provision of services by professionals and experts, including medical practitioners, engineers, architects, advocates, teacher and Hakeems;

(xi) giving false or misleading facts disparaging the goods, services or trade of another person, firm, company or business concern;

(xii) advertising for the sale or supply, at a bargain price, or goods or services which are not intended to be offered for sale or supply at such price;

(xiii) offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction; and

(xiv) falsely gives description of commodities and services offered through mail order.

3. Act not to supersede other laws: – The provisions of this Act shall be in addition to and not in derogation or supersession of any other law for the time being in force.

4. Obligation of manufacturers: – (1) Every manufacturer shall publish or mark on every packet or container the maximum retail price, the nature, standard or type and other specifications of the goods therein, the weight, size or volume and date of manufacture and expiry where appropriate, as the case may be, having regard to the commercial practice in relation to those goods, the name and address of the manufacturer or in the case of a packer or importer, the trader thereof;

Provided that if any goods are not sold in packed form or in container, it shall be sufficient for the purposes of this subsection if the required information is exhibited conspicuously in the shop where the sale is being made;

Provided further that if the price or catalogue or vendor instructions for the consumer is issued in relation to any goods, it shall be sufficient for the purposes of this sub-section if the required information is published or marked on such catalogue or vendor instructions.

(2) Any trader who sells any goods not marked with information required under sub-section (1), shall incur the liabilities of the disregard of sub-section (1), unless he proves that manufacturer of the goods or some other person identified by him is responsible for the offence and the onus of proof shall lie on such trader.

5. Prices to be exhibited at business place. – In the absence of a price catalogue meant for the consumer, every trader shall exhibit conspicuously in his shop or display center a notice specifying the retail or wholesale price, as the case may be, of all goods available for sale in that shop or display center.

6. Receipt to be issued to the purchaser. – Every trader who sells any goods shall, on demand by purchaser, whether he is a consumer or otherwise, issue to the purchaser a receipt setting out,

(a) the date of sale;

(b) the specifications and other identifying particulars of the goods sold;

(c) the quantity and price of the goods;

(d) the nature of sale, that is to say, whether wholesale or retail; and

(e) the name and address of the seller:

Provided that if a trader uses an electronic machine for preparation of receipt in respect of the sale made, such receipt shall be taken as sufficient compliance with the requirements this section.

7. Prohibition of false advertisement, etc. – (1) Notwithstanding anything contained in any other law for the time being in force, no company, firm or person shall advertise in any manner not authorized by law for the sale or hiring of goods or services or any property, movable or immovable, or solicit deposits for repayment at higher rates of profit or interest and thereby causes loss to any consumer, whether financial or otherwise.

(2) Notwithstanding any punishment provided for making misrepresentation, false or misleading advertisement in any other law for the time being in force, the company, firm or a person or undertaking making such advertisement shall be liable to pay such compensation as the Authority may direct for causing loss to the person affected by such advertisement.

PART-II

8. The Council. – (1) As soon as may be, after the commencement of this Act, Government may, by notification in the Official Gazette, establish a Consumers Protection Council in each Division of the Province.

(2) The Council shall consist of a Chairman and such other members as Government may, by notification in the official Gazette, specify.

(3) The existence of vacancy in, or defect in the constitution of the Council shall not invalidate any act or proceedings of the Council.

(4) The Council shall observe such procedure for conducting its business as may be prescribed.

9. Meeting of the Council. – (1) The Council shall meet as and when necessary and at such time and place as the chairman may determine; provided that not more than a period of two months shall intervene between the two meetings of the Councils.

(2) In the absence of the Chairman, the Council shall elect one of its members to act as Chairman.

(3) The quorum of the meeting of the Council shall be two third of the total members.

10. Objects and functions of the Council. – (1) The objects and functions of the Council shall be to determine, promote and protect the rights of consumers, including: -

(a) the right of protection against marketing of goods which are hazardous to life and property;

(b) the right of information about the quality, quantity, potency, purity, standard and price of goods and services;

(c) the right of access to a variety of goods at competitive prices;

(d) the right for redressal against unfair trade practices of unscrupulous exploitation of consumers;

(e) the right of Consumer's education; and

(f) the right of easy availability of essential services and commodities.

(2) The Council shall be responsible for formulation of policies for the promotion and protection of the rights of consumers, fair and honest trade practices by the manufacturers, producers and suppliers of goods and services in relation to interest of consumers and their effective implementation.

(3) For promotion and protection of the interests of consumers, the Council shall coordinate between Government, manufacturers, producers, suppliers and consumers.

(4) All persons, bodies or organization, both official and non-official shall comply with the direction of the council and extend help in advancement of its objects and functions.

(5) The Police Department, Municipal Corporation/ Committees and other agencies of Government shall act in aid of the Authority for performance of its functions under this Act.

11. Delegation of Power. – (1) Government may, by notification in the official gazette, direct that all or any of the powers and functions conferred on the council shall, subject to such limitations, restrictions or conditions, as it may from time to time impose, be exercised and performed by such member or members of the Council or by such officer or officers of Government as may be specified.

(2) Government may appoint such officers as it may deem necessary to assist the council in the performance of its duties and functions.

PART-III

Disposal of Complaints

12. Jurisdiction of the Authority. – (1) Subject to the other provisions of this Act, the Authority having jurisdiction to entertain complaints shall be the Authority within the local limits of whose jurisdiction.

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain provided that in such case either the permission of the Authority is given, or the opposite party who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; and

(c) the cause of action wholly or in part arises.

13. Manner in which complaint shall be made. – (1) A complaint, in relation to any goods sold or delivered or any service provided, may be filed with the Authority by-

(a) the consumer to whom such goods are sold or delivered or such service is provided;

(b) the concerned council;

(c) any recognized consumers association whether the consumer to whom the good sold or delivered or service is provided is a member of such association or not; or

(d) an officer of Government authorized in this behalf.

Explanation: for the purpose of this section "recognized consumer association" means any voluntary consumer association registered under the Companies Ordinance 1984 (XLVII of 1984) or the Societies Registration Act, 1860 (XXI of 1860) or the Voluntary welfare Agencies (Registration and Control) Act., 1961 or any other law for the time being in force and Consumer Cooperative Societies registered under the cooperative Societies Act, 1925 or such other association as may be prescribed.

(2) A complaint under this section shall be submitted within ten days of the sale, delivery or rendering of the service:

Provided that the Authority having jurisdiction to hear the complaint may allow a complaint to be filed after ten days and within such time as it may allow if it is satisfied that there was sufficient cause for not filing the same within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer of the goods or seller of the services and if no such period is specified, one year of the date of purchase of the goods or providing services.

14. Procedure on receipt of complaints. – (1) The Authority may either dispose off the complaint itself or transfer the same to a subordinate magistrate. The Authority or the magistrate subordinate to it, as the case may be, shall on receipt of a complaint, if it relates to any goods:

(a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days;

(b) where the opposite party on receipt of complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to present his case within the time specified as the case may be, the Authority or the magistrate as the case may be, shall proceed to settle the consumer dispute in the manner specified hereinafter provided;

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the Authority or magistrate shall obtain sample of the goods from complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to a laboratory along with a direction to make an analysis or test, whichever may be necessary with a view to finding out whether such goods suffer from any defect and to report its findings thereon to the Authority or magistrate within a period of thirty days of the receipt of the reference or within such period as may be extended by the Authority or magistrate;

(d) before sample of the goods is referred to any laboratory under clause (c), the Authority or magistrate may require the complainant to deposit to the credit of Authority or magistrate such fees as may be specified, for payment to the laboratory for carrying out the necessary analysis or test in relation to the goods in question. The fee so deposited by the complainant shall be recovered from the opposite party if the test/analysis support the complainant's version and paid to the complainant;

(e) on receipt of the report from the laboratory, the Authority or magistrate shall forward a copy of the report , along with such remarks as may be deemed appropriate, to the opposite party and the whole process shall be completed within two months;

(f) if any of the parties disputes the correctness of the findings of the laboratory, or methods of analysis or test adopted by the laboratory, the Authority or magistrate shall require the opposite party or the complainant to submit in writing his objections in regard to the report of the laboratory;

(g) the Authority or magistrate shall give a reasonable opportunity to both the parties of being heard with regard to the correctness or otherwise of the report before making an order under section -15.

(2) The Authority or Magistrate shall, if the complaint received relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any service,

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the Authority or magistrate; and

(b) on receipt of the defence of the opposite party, if any, under clause (b), proceed to settle the dispute on the basis of evidence produced by both the parties.

Provided that if the opposite party does not deny or dispute the allegations made in the complaint or fails to present his case within the specified period, the dispute shall be settled on the basis of the evidence brought by the complainant.

(3) For the purpose of this section, the Authority or magistrate shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (V of 1908), while trying a suit, in respect of the following matters, namely: -

(i) the summoning and enforcing attendance of any defendant or witness and examining him on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the receiving of evidence on affidavits;

(iv) requisitioning of the report of the concerned analysis or test from the laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed

(4) Every proceeding before the authority or magistrate shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Pakistan Penal Code (XIV of 1860) and the authority or magistrate shall be deemed to be a civil court for the purposes of section 195, and chapter XXXV of the Code of Criminal Procedure 1898 (V of 1898) presence of complainant before the competent court shall not be required till the accused/respondent has put up appearance before the authority or magistrate.

15. Findings of the Authority. – (1) If after the proceedings conducted under section 14 the Authority or magistrate is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any or all of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following actions namely

(a) to remove defect from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price or, as the case may be, the charges paid by the complainant;

(d) to do such other things as may be directed for adequate and proper compliance with the requirements of section 4, section 5 or section 6;

(e) to pay such amount as may be awarded by it as compensation to the consumer for any loss or negligence of the opposite party.

(2) Every order made by the authority or magistrate under sub-section (1) shall be signed.

16. Penalties. – (1) Where any right of consumer required to be protected under section 10 is in any way infringed, the person responsible for such infringement shall be punished with imprisonment which may extend to two years or with fine which may extend to fifty (50) thousand rupees, or with both and shall also be liable to provide such compensation /relief as may be determined by the authority or magistrate.

(2) Whoever makes advertisement through print or electronic media or by chalking on walls or in any other manner in contravention of section 7, shall be punished with imprisonment which may extend to two years or with fine which may extend to twenty five thousand rupees, or with both.

(3) The authority or magistrate may, where it is deemed appropriate, order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.

(4) The authority or magistrate may, where it is deemed necessary for protection of the rights of other consumers, order for confiscation of any goods or material or direct for their destruction.

(5) The Authority or magistrate may, where it is deemed appropriate, order for removal of the defect (s) of the product involved or replacement thereof.

17. Appeal Any person aggrieved by an order made by the authority or magistrate may prefer an appeal against such order to the court of sessions within period of thirty days from the date of the order, and the provisions of the Code of Criminal Procedure, 1898 (Act v of 1898), in respect of appeal to the High Court shall mutatis mutandis, apply.

18. Finality of orders. – Every order of the authority or magistrate if no appeal has been preferred against such order under the provision of this act, shall become final.

19 Dismissal of frivolous, or vexatious complaints. – Where a complaint is found to be frivolous or vexatious the vexatious, the Authority or magistrate as the case may be, shall dismiss the complaint and may also impose a fine on the complainant not exceeding five thousand rupees. Appropriate compensation may also be awarded to the respondent from the amount of fine so realized.

20 Principle, liable for offence of agent and servant. – Where any offence under this act is committed by an agent or servant of any manufacturer or trader, such offence shall be deemed to have been committed by such manufacturer or trader unless he proves that such offence was committed without his knowledge.

Part -IV

Miscellaneous

21 Immunity. – No suit, prosecution or other legal proceedings shall lie against the Council or any member thereof or any functionary under this Act or acting under the direction of the Council or Government for anything which is in good faith done or intended to be done under this Act.

22 Power to make rules. – Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act.

23 Power to remove difficulties. – If any difficulty arises in giving effect to any of the provisions of this Act, Government may, make such orders not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty.