

A BILL

FOR

AN ACT TO AMEND THE CONSUMER PROTECTION COUNCIL ACT CAP C 25 LAWS OF THE FEDERATION OF NIGERIA 2004 TO MODIFY ITS COMPOSITION, WIDEN ITS FUNCTIONS AND POWERS IN ORDER TO PROVIDE FOR A BROADER AND MORE EFFECTIVE COUNCIL AND FOR RELATED MATTERS

Sponsored by Senator Egnr Clifford Ordia

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria:

1 1. The Consumer Protection Council Act Cap C25 LFN 2004 (in
2 this Act referred to as "the Principal Act") is amended as set out in this Act. Amendment of
CAP C25 LFN,
2004

3 2. Section 1 of the Principal Act is amended by substituting for
4 existing section I, a new section I: Amendment of
Section 1

5 (1) There is established a Council to be known as the Consumer
6 Protection Council (in this Act referring to as "the Council") which shall be a
7 body corporate with perpetual succession and a common seal and with
8 protection power to sue and be sued in its corporate name. Establishment
and composition
of the Consumer
Protection Council

9 (2) The Council shall have its principal office at the Federal Capital
10 Territory, Abuja and a Branch Office at the capital city of each State of the
11 Federation, and a Federal Unit at the Federal Capital Territory.

12 (3) The Council shall consist of:

13 (a) a chairman (who shall be a person not employed in the public
14 service) and shall be:

15 (i) a suitable qualified person by reason of his profession, academic
16 or administrative qualifications or by his attainment in any field of human
17 endeavour;

18 (ii) appointed by the President, subject to confirmation by the

- 1 Senate; and
- 2 (iii) the chief executive officer of the Council;
- 3 (b) thirty-seven persons, not employed in public service, who shall:
- 4 (i) represent each State of the Federation and the Federal Capital
- 5 Territory,
- 6 (ii) be known as State branch coordinators, and Federal unit
- 7 coordinators of the Council,
- 8 (iii) be persons of unquestionable integrity and experience in matters
- 9 relating to trade, commerce and industry,
- 10 (iv) be recommended by the respective State Governor of each State
- 11 of the Federation and as the case may be the Minister of the Federal Capital
- 12 Territory, and
- 13 (v) be appointed by the President subject to confirmation by the
- 14 Senate;
- 15 (c) four persons, not below the rank of a Director to represent each of
- 16 the following Federal Ministries:
- 17 (i) Commerce, trade and tourism,
- 18 (ii) Industries,
- 19 (iii) Health, and
- 20 (iv) Justice;
- 21 (d) one representative of a voluntary consumer group or association
- 22 for consumers.
- 23 (4) A member of the Council, other than an ex-officio member, shall
- 24 not while holding office, hold any other office of emolument whether in private
- 25 business or in the Federal or State Public Service.
- 26 The supplementary provisions contained in the schedule to this Act
- 27 shall have effect with respect to the proceedings of the Council and other
- 28 matters contained therein".
- 29 Insert section I A immediately after the existing section 1 of the
- 30 Principal Act:

Schedule 1:
Proceedings of
the Council

Insertion of
Section I A

1 "1A-(1) Subject to subsection (2) of this section, a member of the
2 Council, who is not an ex-officio member:

Tenure and
removal from
office

3 (a) shall hold office for a period of four years from the date of his
4 appointment and shall be eligible for reappointment for further term of four
5 years and no more;

6 (b) may resign his appointment by writing under his hand, a letter
7 addressed to the President, and his membership shall terminate on the date
8 of the receipt of his letter of resignation; and

9 (c) shall be paid such remuneration and allowances as the Revenue
10 Mobilization Allocation and Fiscal Commission may, from time to time,
11 determine.

12 (2) A member of the Council other than an ex-officio member, may
13 only be removed from office by the President acting on the recommendation
14 supported by two-thirds majority of the Senate for inability of such a
15 member to discharge the functions of his office (whether arising from
16 infirmity of mind or body or any other cause) or for misconduct.

17 (3) Without prejudice to subsection (2) of this section:

18 (a) any member who is absent from three consecutive meetings of
19 the Council in any particular year shall file in explanation to the Chairman of
20 the Council for consideration by other members of the Council, and if his
21 explanation is not accepted by the Council; or

22 (b) where the Council is satisfied that the continued presence on the
23 Council of any member is not in the interest of overall objectives and
24 functions of the Council, the Council may recommend to the President,
25 through the Minister that the member be removed and to declare the office of
26 that member vacant.

27 (4) Any member appointed to any vacant position, resulting from
28 the application of the provision of this section shall represent the same
29 interest which the predecessor represented, and shall only complete the term
30 which, if the predecessor had continued in office, he would have completed.

Amendment of
Section 2

1 4. Insert immediately after the existing paragraph (i) of section 2 of
2 the Principal Act the following new paragraphs (k) to (t) as follows, and
3 renumber the existing paragraph (k) as (u):

4 "(k) carry on regular research study and analysis of consumer
5 products standard, and services rendered to consumers and publish its
6 observations, findings and recommendations in a quarterly journal for the
7 benefit and general information of consumers;

8 "(l) act generally to reduce the risk and injuries which may occur from
9 consumption of certain consumer items and other services rendered to
10 consumers;

11 "(m) ensure that all service providers, i.e. Telecommunication service
12 providers, digital satellite service providers, comply with International
13 standards and quality service delivery;

14 "(n) issue guidelines from time to time, for the control over food
15 additives and dangerous herbicides and pesticides;

16 "(o) establish and maintain an injury information centre;

17 "(p) seek compensation or redress for persons who suffer injuries and
18 those who die from acts of negligence or professional incompetence from any
19 surgeries or medicaments rendered to any patient by any person purporting to
20 be a medical practitioner, physician or pharmacist, as the case may be;

21 "(q) establish a special research unit to monitor and report on consumer
22 products standards and services rendered to consumers in the market place and
23 publish its observations, findings and recommendations in a quarterly journal
24 for the benefit and general information of consumers;

25 "(r) carry out the registration of all products and services and establish
26 and maintain a register of products and services;

27 "(s) supervise, superintend, register and monitor sales promotions or
28 any promotional marketing techniques, which involve providing a range of
29 direct or indirect additional benefits usually on a temporary basis designed to
30 make goods or services more attractive to purchasers;

1 (t) in the exercise of its powers, the Council shall invite members of
2 sector specific regulatory agencies to participate in its proceedings of such
3 terms and conditions as both agencies shall agree the Council shall attach
4 appropriate weight to the views, opinions and advice of such sector specific
5 regulatory Agencies".

6 5. Substitute for the existing section 4, a new section 4:

Substitution of
Section 4

7 "4.-(1) There shall be established to assist the Council in each State
8 of the Federation, a State Committee which shall, subject to the general
9 supervision of the Council, receive, investigate and act on complaints from
10 consumers, and shall consist of the following persons:

11 (a) the State branch coordinator appointed pursuant to section I (3)

12 (b) of this Act who shall:

13 (i) be the head of the State Branch Office;

14 (ii) coordinate the activities of the State Branch Office;

15 (iii) disburse the funds of the State Branch Office, and carry on the
16 general administration of the State Branch Office and implementation of the
17 functions of the Council in the State or Federal Capital Territory, as the case
18 may be,

19 (b) a Deputy State Branch Coordinator who shall be appointed by
20 the Council;

21 (c) such other members of staff as the Council may deem necessary
22 to appoint from time to time for each State Branch Office, including person
23 on secondment or transfer from the public service of the Government of the
24 Federation or of a State.

25 (2) The Council may, if it considers it necessary for due and proper
26 execution of the functions under this Act, appoint a secretary for each State
27 Branch Office and the Federal unit at the Federal Capital Territory"

28 6. Substitute for the existing section 5 a new section 5:

Substitution of
Section 5

29 "5. Each State Branch Office shall, subject to the general direction
30 and control of the Council, have responsibility to:

1 (a) initiate, on its own, and receive any, inquiry into the causes and
 2 circumstances of any product used or services rendered to such a consumer by
 3 any business enterprise, trading company, firm, manufacturing company or an
 4 individual;

5 (b) carry on the role of arbiter between parties concerned in any
 6 dispute connected with the functions of the Council for the purpose of bringing
 7 about a settlement; and

8 (c) seek redress or compensation sought by any injured consumer or
 9 group of consumers from an offending body corporate or individual."

Amendment of
 Section 8

10 7. Section 8 of the Principal Act is amended by inserting new
 11 paragraphs (c) and (d) as follows:

Representative
 of the action

12 (c) (1) The defence of consumer rights under this Act shall be
 13 exercised or conducted through individual or collective litigation.

14 (2) Litigation shall be conducted collectively when diffuse or
 15 collective interests or rights are involved.

16 (3) For the purposes of this Act:

17 (a) "diffuse interests" means; supra-individual rights or interests
 18 having an indivisible nature to which undetermined individuals are entitled,
 19 such individuals being linked by factual circumstances the separation or
 20 severance of which would occasion injustice;"

21 (b) "collective interests" mean those supra-individual interests
 22 having an indivisible nature vested in a group, category or class of individuals
 23 linked among themselves or linked with the opposing party on the basis of
 24 juridical relationships.

25 (4) Consumer associations created pursuant to the provisions of this
 26 Act shall be lawfully entitled to act in Judicial or administrative tribunals in the
 27 collective defense of the rights that this Act vests in consumers.

28 (5) The decisions rendered in collective procedures shall have a
 29 general effect and ensure to all consumers except where any such decision is
 30 dismissed for want of proof in which event any other consumer having an

1 interest in the matter may bring a new consumer dispute or action on the
2 basis of facts and claims arising from the same transaction.

3 (6) In all representative, class, group, individual or collective
4 proceedings brought pursuant to the application of this Act the burden of
5 proof shall be reversed in favour of the party who litigates on behalf of the
6 rights herein contained.

7 (d) (1) The High Court or a Magistrate Court or such mobile courts
8 as may be constituted by the Chief Judge of the High Court of a State or of
9 the Federal Capital Territory shall have jurisdiction over criminal
10 proceedings specified under this Act.

Criminal
proceedings

11 (2) Subject to the provisions of section 160 of the Constitution of
12 the Federal Republic of Nigeria (which relates to the power of the Attorney-
13 General of the Federation to institute, continue or discontinue criminal
14 proceedings against any person in any court of law), any officer of the
15 Council may, with the consent of the Attorney General of the Federation,
16 conduct criminal proceedings in respect of offences under this Act or
17 regulations made under this Act.

18 (3) In a judicial proceeding for an offence under this Act or any
19 regulations made under this Act, the provisions of the Criminal Procedure
20 Code or depending on the venue, the Criminal Procedure Act shall with such
21 modifications as the circumstance may require apply in respect of such
22 matter to the same extent as they apply to the trial of offences generally.

23 8. Section 9 of the Principal Act is amended in subsection (2) by
24 deleting the words "five years" and inserting the words "six months. instead
25 thereof.

Amendment of
Section 9

26 9. Section 11 of the Principal Act is amended by deleting the figures
27 "N50,000" and inserting the figures "N100,000" instead thereof and
28 deleting words "five years" and inserting the words "one year" instead
29 thereof.

Amendment of
Section 11

Amendment of
Section 12

1 10. Section 12 of the Principal Act is amended in paragraph (a) by
2 deleting the figures "N50,000" and inserting the figures "x I 00,000" instead
3 thereof and deleting words "five years" and inserting the words "one year"
4 instead thereof.

Insertion of
Section 15A

5 11. Insert section 15A immediately after the existing section 15 of the
6 Principal Act.

7 "15A-(1) Without prejudice to the provision of section 15 of this Act,
8 an inspecting officer may in the course of his duty only enter upon a building or
9 premises, on the authority of an entry warrant issued by a Judge of the Federal
10 High Court or by a Magistrate with jurisdiction in the area where the building
11 or premises is situated.

12 (2) The warrant shall only be issued if it appears to the Judge or
13 Magistrate from information on oath that there are reasonable grounds to
14 believe that an article or thing which is the subject of an inquiry by the
15 inspecting officer is in such a building or premises.

16 (3) Any warrant issued subject to the provision of subsection (1) of
17 this section shall:

18 (a) specify the article or thing being sought; and

19 (b) be executed by day unless the person who issues it authorizes the
20 execution at another time, which shall be reasonable.

21 (4) Any inspecting officer executing any warrant issued pursuant to
22 subsection (1) of this section shall have regard for the right of-

23 (a) any person encountered in any such premises to respect the
24 protection of his dignity;

25 (b) a person to freedom and security; and

26 (c) a person to his personal privacy.

27 (5) An inspecting officer shall immediately before commencing with
28 the execution of a warrant:

29 (a) identify himself by displaying his certificate of designation to the
30 person in control of the building or premises, if such a person is present, hand to

1 such a person a copy of the warrant, or if such a person is not present, affix
2 such copy to a prominent place on the premises; and

3 (b) supply such a person at his request with particulars regarding
4 his authority to execute such a warrant

5 (6) An inspecting officer at the request of the Councilor Minister
6 may, without a warrant enter upon any building or premises, other than a
7 private dwelling house and search for, seize or remove any article or thing
8 being sought for, if upon reasonable grounds such inspecting officer
9 believes that:

10 (a) the required warrant would be issued if the were to apply for it;
11 and

12 (b) the delay caused by the procedure for obtaining any such
13 warrant would defeat the object of the entry, search, seizure or removal.

14 (7) A warrant obtained pursuant to the provision of this section,
15 may be issued on any day and shall be in force until:

16 (a) it is executed;

17 (b) if it is cancelled by the person who issued it, if such person is not
18 available, by any person with like authority;

19 (c) the expiry of one month from the day of its issue; or

20 (d) the purpose for the issuing of the warrant has lapsed, which ever
21 may occur first.

22 (8) Subject to the provision of this Act, no article or information
23 obtained pursuant to the exercise of the powers granted to an inspecting
24 officer in this section, shall be made public and no person except a member
25 of the Councilor the Minister shall have access to such article or information
26 until such a time as the chairman of the Councilor the Minister determine
27 that it may be made public.

28 (9) A person who contravenes the provisions of subsection (8) of
29 this section commits an offence and is liable on conviction to a fine not

1 exceeding N20,000 or to imprisonment for term not exceeding 12 months, or to
2 both.

Amendment of
Section 18

3 12. Section 18 of the Principal Act is amended by deleting the figures
4 "N10,000" and inserting the figures "N100,000" instead thereof and deleting
5 words "five years" and inserting the words "one year" instead thereof.

Amendment of
Section 19

6 13. Section 19 of the Principal Act is amended by deleting the figures
7 "N10,000" and inserting the figures "N100,00" instead thereof and deleting
8 words "three years" and inserting the words "one year" instead thereof.

Amendment of
Section 21

9 14. Section 21 of the Principal Act is amended by:

10 (i) deleting the figures "N10,000" and inserting the figures "N50,000"
11 instead thereof and deleting words "three years" and inserting the words "six
12 months" instead thereof.

13 (ii) by inserting a new section 21 (2) as follows:

14 "(2) In this Act, the following practice shall constitute unfair
15 consumer trade practice and are hereby prohibited:

16 (a) where a person makes a representation with respect to any future
17 matter (including the doing of, or the refusing to do any act) and the person does
18 not have reasonable grounds for making the representation, the representation
19 shall be taken to be misleading; the burden of proving that the person has
20 reasonable grounds for making the representation is on the person making the
21 representation.

22 (b) a person, shall not, in trade or commerce, in connection with the
23 supply or possible supply of goods or services to a person, engage in conduct
24 that is, in all the circumstances, unconscionable. Unconscionable conduct shall
25 include the following:

26 (a) deceitful conduct by the seller;

27 (b) non-explanation of the legal and practical effects of any contract to
28 the consumer;

29 (c) non-explanation of the implication of any contract in writing to the
30 consumer;

1 (d) whether the consumer was able to understand any documents
2 relating to the supply of the goods or services;

3 (e) any undue influence or pressure exerted on or any unfair tactics
4 used against the consumer; and

5 (f) exploitation of the consumer.

6 (3) A person is not allowed, in the course of trade or commerce or in
7 connection with the supply or possible supply of goods or services or in
8 connection with the promotion by any means of the supply or use of goods or
9 services to:

10 (a) falsely represent that goods are of a particular standard, quality,
11 value, grade, composition, style or model or have had a particular history or
12 particular previous use;

13 (b) falsely represent that goods are new;

14 (c) falsely represent that a particular person has agreed to acquire
15 goods or services.

16 (d) represent that goods or services have sponsorship, approval,
17 performance characteristics, accessories, uses or benefits they do not have;

18 (e) make a false or misleading representation concerning the
19 availability of facilities for the repair of goods or of spare parts for goods;

20 (f) make a false or misleading representation concerning the place
21 or origin of goods;

22 (g) make a false or misleading representation concerning the
23 existence, exclusion or effect of any condition, warranty, guarantee, right or
24 remedy.

25 (4) It shall be an offence for a person in trade or commerce to
26 advertise goods or services for supply at a price and later not offer such
27 goods or services at that price.

28 (5) [t shall be a defence if a person in commerce or trade establishes
29 that:

30 (a) offered, to supply or to procure another person to supply goods,

1 or services of the kind advertised to the consumer at the advertised prices; or

2 (b) he offered to supply immediately, or to procure another person to
3 supply equivalent goods or services to the consumer at the prices at which the
4 goods and services were advertised.

5 (6) A person shall not be taken for the purposes of this section to have
6 authorized the making of an entry in a directory unless:

7 (a) A document authorizing the making of the entry has been signed
8 by the person or by another person authorized by him:

9 (b) A copy of the document has been given to the person before the
10 right to payment of a charge for the making of the entry is asserted; and

11 (7) (i) [It shall be unlawful to establish, operate, advertise or promote
12 a scheme of pyramid selling.

13 (ii) For the purpose of this section, "scheme of pyramid selling means
14 a trading scheme whereby:

15 (a) a participant anticipates receiving compensation by reason of
16 recruitment into the scheme of another participant;

17 (b) a participant in the scheme gives consideration, as a condition for
18 participating in the scheme, for a specified amount of the product, other than a
19 specified amount of the product that is bought at the seller's cost price for the
20 purpose of facilitating sales;

21 (c) a person knowingly supplies the product to a participant in the
22 scheme in an amount that is commercially unreasonable; or

23 (d) a participant in the scheme who is supplied with the product does
24 not have a buy back guarantee that is exercisable on reasonable commercial
25 terms, or is not informed of the existence of the guarantee or right and the
26 manner in which it can be exercised.

27 **15.** Section 22 of the Principal Act is amended by inserting a new
28 section 22 (6) as follows:

29 "The Council shall appoint a secretary, who shall:

30 (a) have such qualifications and experience as are appropriate for a

1 person required to perform the functions of such an office under this Act;

2 (b) issue notices of meeting of the Board;

3 (c) be responsible for preparing the minutes of the meetings of the
4 Board; and

5 (d) perform such other duties as may be determined by the
6 Council".

7 **16.** Substitute for the existing section 28, a new section 28 as
8 follows:

Substitution of
Section 28

9 **28.-(1)** The Council shall cause to be prepared not later than six
10 months before the end of each financial year, an estimate of the expenditure
11 and income of the Council during the next succeeding year and when
12 prepared it shall be submitted to the Office of the President through the
13 Minister.

Annual estimates,
accounts and audit

14 (2) The Council shall keep proper accounts and records, and shall
15 prepare in respect of each financial year a Statement of account in such form,
16 as the Chairman shall direct.

17 (3) The Council shall, as soon as possible, after the end of the
18 financial year to which the accounts mentioned in subsection (2) of this
19 section relates, cause its accounts to be audited by qualified auditors
20 appointed by the Council from the list of auditors and in accordance with the
21 guidelines laid down by the Auditor-General of the Federation.

22 (4) The auditors shall on completion of the audit of the accounts of
23 the Council for each financial year, prepare and submit to the Council, the
24 following two reports:

25 (a) general report setting out the observations and
26 recommendations of the auditors on the financial affairs of the Council for
27 each year; and on any important matters which the auditors may consider
28 necessary to bring to the notice of the Council; and

29 (b) a detailed report containing the observations and
30 recommendations of the auditors on all aspects of the operations of the

1 Council for that year".

Subsection of
Section 29

2 17. Substitute for the existing section 29, a new section 29 as follows:
3 "In addition to, any after report specified under this Act, the Council shall
4 prepare and submit to the President and the National Assembly, through the
5 Minister, not later than the last day of June of a financial year, a report on the
6 accounts of the Council during the immediately preceding financial year, and
7 shall include in that report a copy of the audited accounts of the Council for that
8 year together with the auditors report".

Insertion of
Section 30A

9 18. Insert section 30A immediately after Section 30 of the Principal
10 Act:

11 "30A-(1) No proceedings against the Council a member, officer, or
12 servant of the Council in his capacity as such, shall lie or be instituted in any
13 court unless it is commenced within the twelve months following the act,
14 neglect or default complained of or, in the case of a continuance of damage or
15 injury, within the twelve months following the cessation.

16 (2) No proceedings shall be commenced against the Council or against
17 any member, officer or servant of the Council in his capacity as such until one
18 month at least after there has been served on the Council by or on behalf of the
19 intending plaintiff written notice of intention to commence the proceedings,
20 stating the:

21 (a) cause of action;

22 (b) particulars of the claim;

23 (c) name and place of abode of the intending plaintiff and the relief
24 claimed.

25 (3) The notice referred to in subsection (2) of this section and any
26 summon notice or other documents required or authorized to be served and the
27 Council may, except where there are express provisions to the contrary, be
28 served by:

29 (a) delivering it to the Chairman or the Secretary.

- 1 19. This Bill may be cited as the Consumer Protection Council Act Citation
2 (Amendment) Bill, 2016.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Consumer Protection Council Act CAP C25 Laws of the Federation of Nigeria 2004 to modify its composition, widen its functions and powers in order to provide for a broader and more effective Council.

