

ACT 19496 – RULES REGARDING THE PROTECTION OF CONSUMER'S RIGHTS

.....

Article 2 bis.- Notwithstanding what is prescribed in the previous article, the rules of this law will not apply to such activities as the production, manufacture, import, construction, distribution or sale of goods or rendering services regulated by special laws, except:

- a) In matters not envisaged in the latter,
- b) Regarding the procedure of cases in which the collective or widespread interest of consumers or users is compromised, and the right to ask for compensation by means of that procedure, and
- c) With regard to the right of a consumer or a user to resort individually, in accordance with the procedure established in this law, to the corresponding court of law in order to be compensated for any original damage contracted by the suppliers, always provided there are no compensatory procedures in those special laws.

.....

Article 5.- An Association of Consumers is understood as being an organization consisting of natural persons or legal bodies, independent of any economic, commercial or political interest, whose objective it is to inform and educate consumers and assume the representation and defense of the rights of their members and any consumers requesting it, all of which is independent from any other interest.

Article 6.- Consumer associations will be governed by what is set forth in this law and what is not envisaged in it as a result of decree Law N° 2.757 of 1979 of the Minister of Labor.

Article 7.- Besides the reasons for dissolution mentioned in article 18 of decree law N° 2.757 of 1979, consumer organizations may be dissolved as a result of a court order or by law, despite whatever their members might decide.

In the event that the judge, within a deadline of three years, declares two or more collective lawsuits filed by the one same Association of Consumers to be reckless, upon the request of the party, in serious and qualified cases, he may decree the dissolution of the association passing a sentence with good grounds.

The directors of Associations of Consumers dissolved as a result of a court order will be unable to take part, as such, in any other associations of consumers for a period of two years.

Article 8.- The organizations referred to in this paragraph may only exercise the following functions:

- a) Transmit a knowledge of the provisions of this law and its complementary regulations,
- b) Inform, orient and educate consumers so that they might properly exercise their rights and provide them with advice when required to do so,
- c) Study and propose measures aimed at protecting the rights of consumers and making and supporting investigation into areas of consumption,
- d) Represent their members and take whatever action is referred to in this law in defense of those consumers who grant it the corresponding mandate, and
- e) Represent both the individual as well as the collective and widespread interest of consumers when dealing with jurisdictional or administrative authorities by means of whatever action and appeals are necessary,
- f) Take part in processes aimed at fixing the tariffs of basic household services in accordance with the laws and regulations governing them.

Article 9.- The organizations dealt with in this paragraph under no circumstances may:

- a) Undertake remunerated activities, with the exception of those necessary for financing or recovering the costs of development and compliance with the activities that pertain to them.
- b) Include as members any legal bodies devoted to corporate activities,
- c) Receive help or subsidies from companies or groups of companies supplying goods or services to consumers,
- d) Publicize or transmit communications not merely informative regarding goods or services; nor may they
- e) Devote their time to any activities other those mentioned in the previous article.

Any serious and repeated violations of the rules found in this article will be punished with the annulment of the organization's legal title, by court order, at anybody's request, regardless of whatever civil or criminal liabilities are incurred by whoever perpetrates them.

.....

Article 11 bis.- A Competitive Fund is created devoted to financing the initiatives of Associations of Consumers established according to what is set forth

in this law and which are developed in compliance with its aim, with the exclusion of the activities referred to in letters d) and e) of article 8.

This Fund will come out of the budget that is envisaged each year for the National Consumer Service and from donations made for that purpose by national and international non-profit making organizations.

A regulations establishes the setting up and composition of the Board of the Fund, preserving the independence of Associations of Consumers and the management of the Fund.

.....

Article 50.- All action stemming from this law will be exercised with regard to any acts or conduct affecting any of the rights of consumers.

Noncompliance with the rules found in this law will give rise to action aimed at punishing the supplier who incurs in a violation, cancel any abusive clause incorporated into membership contracts, obtain the rendering of the noncompliant obligation, stop whatever act affects exercising rights by consumers, so as to obtain due compensation for damages or whatever redress is forthcoming.

Exercising the action may be done individually or to the benefit of a collective or widespread interest of consumers.

Individual interest is action that is taken exclusively in defense of the rights of the consumer affected.

Collective interest is that action that is taken in defense of the common rights of a determined or determinable series of consumers, linked to a supplier under a contract.

Widespread interest is that action taken in defense of an undetermined series of consumers whose rights are affected.

For the purpose of determining compensation or whatever redress is due, in accordance with the rules mentioned in paragraph 2 of thus Title, it will be necessary to vouch for the damage and the contractual link which ties the perpetrator to the consumers affected.

....

Article 50 F.- If during a procedure the judge learns of the existence of goods susceptible to causing damage, he shall order them to be kept in custody by the court if he deems necessary. If this is not practical, in view of their nature or characteristics, the judge will order expert opinion to be rendered that enables the state, quality and aptitude to cause damage or any other relevant element of the goods or products to be vouched for, and he will order whatever measures are necessary for the safety of the persons or the goods.

.....

Article 51.- The procedure mentioned in this Paragraph will apply whenever a collective or widespread interest of consumers is affected. This procedure will be subject to the rules of summary procedure, with the exception of articles 681, 684 and 685 of the Civil Proceedings Code and with the singularities envisaged in this law. Whatever proof has to be rendered will be appraised in accordance with the rules of fair criticism.

- 1.- It will begin as a result of a suit filed by:
 - a) The National Consumer Service,
 - b) An Association of Consumers, established at least six months before filing the action and which has due authorization from its members to do so, and
 - c) A group of consumers affected by one sole interest, amounting to no less than 50 persons, duly identified.

The court will order the defendant be notified and, for the purpose of what was mentioned in N° 9, the National Consumer Service as well, should the latter have not begun proceedings.

- 2.- Regardless of the general requirements of the suit, as regards the petitions relating to damages, suffice it to mention the damage sustained and ask for whatever compensation the judge determines in accordance with the merits of the case, which shall be the same for all of the consumers in the same situation. So, the judge will proceed in accordance with what is set forth in article 53 A. Whatever compensation is determined in this procedure may not extend to pain and suffering by the person involved. The reserve envisaged in paragraph two of article 173 of the Civil Proceedings Code will not be admitted.
- 3.- Once the case has begun, any active legitimate person or consumer who considers him or herself affected may join it.
- 4.- When dealing with the National Consumer Service or an Association of Consumers, the plaintiff will not be required to vouch for the representation of determined consumers of the collective on behalf of which he is acting.
- 5.- The plaintiff who is part of a procedure such as those regulated in this paragraph, may not, whilst the procedure is still pending, file an individual interest based on the same facts.
- 6.- Filing the suit will cause prescription to be interrupted of the compensatory action of the consumers affected. Regarding those

persons who reserved their rights in accordance with article 54 C, calculating the new deadline for prescription will count as from when the sentence is firm and enforced.

- 7.- In the event that the judge deems that the lawyers' acts are getting in the way of the normal passage of the case, he will ask the legitimate parties to it to appoint a common solicitor from among their corresponding lawyers within a deadline of ten days. Subsidiarily, he will be appointed by the judge from among the same lawyers.

The powers and acts of the common solicitor, as well as the rights of the parties represented by him and those wielded by the court, will be governed by what is set forth in Title II of Book I of the Civil Proceedings Code. All in all, whatever ruling is issued by the court in accordance with article 12 of the Civil Proceedings Code, will be communicated by means of notices, in whatever way the court determines. These notices will be drafted by the clerk.

Notwithstanding the foregoing, the judge may order some other way in which to notify them in those cases so that each one of the number of affected parties becomes fully aware in some other way.

The judge will prudentially regulate the fees of the common solicitor, after he has proposed it, bearing in mind the economic possibilities of the plaintiffs and the cost of the case.

For the purpose of what is established in the previous paragraph, the judge will fix the fees in the final sentence or once the members of the group or sub-group have been defined.

The judge, officially or at the request of the party and with good grounds, may revoke the judicial mandate whenever the representation of the collective or widespread interest is not sufficient to properly protect the interests of the consumers or when there is some other reason warranting its revocation.

- 8.- All appeals that are granted in this procedure will be added as extraordinary on the docket for the day after the case has entered the corresponding Court of Appeals, with the exception of what is mentioned in article 53 C, in which case the case will be list on the docket of the week after it enters the court.

- 9.- Any action whose admissibility is pending, will accumulate in accordance with the general rules of procedure. For this purpose, the National Consumer Service will inform the judge of the fact that the declaration of admissibility of another suit regarding the same facts is pending.

Article 52.- It will be up to the court itself to declare the admissibility of the suit filed in order to safeguard the collective or widespread interest of the consumers, vouching for the concurrence of the following elements:

- a) That the suit was filed by one of the legitimate persons identified in article 51.
- b) That the conduct pursued affects the collective or widespread interest of the consumers in the terms mentioned in article 50.
- c) That the suit filed pinpoints the factual issues affecting the collective or widespread interest of the consumers and the rights affected.
- d) That the potential number of persons affected warrants, in terms of costs and benefits, the financial or procedural needs of submitting it for the special procedures of this paragraph so that their rights are properly protected. Whatever the number of affected parties, it will be understood that this circumstance will not occur if each and every one of the following conditions regarding the case concur: the manufacturing process, by its very nature, envisages a percentage of faults within industry standards; the supplier is able to prove having maintained quality procedures in view of complaints, repairs and returning money in the case of faulty products, at no cost to the consumer and faults or defects that do not pose a health risk.

The defendant will have ten days in which state whatever he deems necessary in relation to the requirements of the admissibility of the case. If the judge deems that substantial, pertinent and controversial facts exist, he will admit the case. Proof will be governed by the rules of the pleas. The judge will rule regarding the admissibility of the case within five days after the one on which the suit was filed or within five days after expiry of the deadline for making such filing and it had not been made, or within five days after the expiry of the pleadings period, whichever the case may be

Whatever decision is announced regarding the admissibility of the action may be appealed by both sides.

Once the ruling that declares the action admissible has been enforced, this circumstance will be certified in the file. If it is declared inadmissible, the corresponding action may only be filed individually in a competent court in accordance with what is mentioned in letter c) or article 2 bis.

Notwithstanding what is mentioned in previous paragraphs, if new circumstances appear that warrant a review of the inadmissibility declared, any legitimate person may begin a new action in the same court.

Article 53.- Once the ruling has been enforced that declared the action admissible, the court will order that, within ten days inclusive, at least two notices of an invitation to take part of the consumers who consider themselves affected, if they think fit, is published in a newspaper with a national circulation.

It will be up to the clerk of the court to fix the contents of the notice which will contain, at least, the following mentions:

- a) The court which in the first instance, issued the certification of admissibility,
- b) The date certified.
- c) The name, tax number, profession or trade and address of the group's representative,
- d) The name, tax number, profession or trade and address of the person against whom the collective action is being filed,
- e) A brief review of the concrete facts and petitions submitted for the consideration of the court, and
- f) A call to those affected by the same facts to take part in the suit, expressing that the results of the case will also affect those who had not joined it initially.

As from publication of the notice referred to in the second paragraph, nobody may begin any other action against the defendant based on the same facts, regardless of what is mentioned in the next paragraph and what is set forth in article 54 C regarding reserving rights.

Within a deadline of 30 days after publication of the notice referred to in the previous paragraph, any consumer may go to court and reserve his/her rights, in which case the results of the case may not be contested.

Those suits that are pending against the same supplier the moment the notice is published and which are based on the same facts, shall accumulate in accordance with what is set forth in the Civil Proceedings Code, with the following special rules:

- 1) All individual cases will accumulate into the collective case. If one or more of the parties had appeared personally in the individual case, he shall appoint a lawyer once accumulation has occurred, and
- 2) An individual case will not accumulate into the collective one once the parties have been summoned to hear sentence.

Article 53 A.- During the case and until the final sentence has been passed, inclusive, the judge may order, depending on the characteristics that are common

to them, the formation of groups and, if necessary, of sub-groups, for the purposes mentioned in letters c) and d) of article 53 C. The judge may also order the formation of as many groups as he deems necessary.

Article 53 B.- The judge may call reconciliation hearings as many times as he deems necessary during the case.

On the other hand, the defendant may seek to come to arrangements, which shall be held in public.

Any arrangements, reconciliations or transactions shall be submitted for the approval of the judge, who may reject them if he deems they are against the law or arbitrarily discriminatory.

Should the legitimate person abandon suit, the court will transfer it to the National Consumer Service, which may take part in the case within five days. This resolution will be notified in accordance with article 48 of the Civil Proceedings Code. The same situation will occur in the event that the legitimate party loses his capacity as such.

Article 53 C.- In the sentence on the case, the judge, besides what is set forth in article 170 of the Civil Proceedings Code, shall:

- a) Declare the manner in which the facts have affected the collective or widespread interest of the consumers.
- b) Declare the liability of the supplier/s being sued in the facts reported and the application of whatever fine or penalty is due.
- c) Declare how the corresponding compensation or redress is to be paid and the amount of compensation or redress in favor of the group or each member of the sub-groups, if necessary.
- d) Order that whatever was paid in excess be reimbursed, and how that shall be done, in the event that it refers to procedures begun by virtue of an undue charge of certain sums of money. In the case of faulty products, their value when paid for will be reimbursed.
- e) Order the publication of the notices referred to in paragraph three of article 54 to be charged to the perpetrator/s.

In any event, the judge may order that some or all of the compensation, redress or reimbursements that are due regarding a group or a sub-group, be made by the defendant without the need for the interested parties established in article 54 C to appear, whenever the judge determines that the supplier has the necessary information with which to identify them. Both parties may appeal the final sentence.

Article 54.- The enforced sentence declaring the liability of the defendant/s will take effect *erga omnes*, with the exception of those cases that have not been able to accumulate in accordance with number 2) of the

final paragraph of article 53 and those cases where a reservation of rights can be exercised under that same article.

The sentence will be made known so that all those who have been damaged by the same facts can claim compensation or compliance with whatever redress is due.

That will be done by means of notices published at least on two different occasions, in whatever local, regional or national newspapers the judge determines, with an interval of no less than three nor more than five days between them.

Notwithstanding the foregoing though, the judge may order some other way in which to make known the information referred to in paragraph one, in those cases in which the number of affected parties enables each and every one of them to be informed.

If the suit has been overruled, any legitimate party may file, within the deadline for prescription of the action, before the same court and availing him/herself of new circumstances, a new suit, whereupon it will be understood that the prescription for the whole of the period the collective case lasted has been suspended. The court will declare that it is faced with new circumstances together with a declaration of admissibility of the action set forth in article 52.

Article 54 A.- It will be up to the clerk of the court to fix the contents of the notices, trying to make its text as clear and understandable as possible for the interested parties. Such notices will contain, at least, the following mentions:

- a) The number of the case, the court that ruled on it, the date of the sentence and the name, profession or trade and address of the violators and their representatives, It will be assumed that the person who appeared as such in that case conserves that capacity and his/her address,
- b) The facts that gave rise to the liability of the violator/s and the way in which they affected the rights of the consumers,
- c) An identification of the group, if it is split up into sub-groups and the deadline for the interested parties to wield their rights,
- d) The institutions where the affected parties may obtain information and orientation, such as the National Consumer Service, municipal consumer information offices and Associations of Consumers, among others.

Article 54 B.- The interested parties may appear in court exercising their rights, represented by lawyers or personally.

Regardless of what is set forth in the previous paragraph, having appointed a common solicitor, the interested parties will act through him in accordance with the general rules of procedure. Otherwise, he will be appointed in order to represent those interested parties who had appeared personally, once the deadline of ninety days established in article 54 C has expired.

Article 54 C.- The interested parties shall appear in order to exercise their rights established in the sentence before the same court that dealt with the case, within a deadline of ninety consecutive days as from the last notification.

Within the same deadline, the interested parties may reserve their rights to pursue any civil liability stemming from the violation in a different case, albeit the existence of the violation already declared cannot be discussed. This submission shall be represented by a lawyer and in this case, the sentence passed in accordance with article 53 C will fully witness the existence of the violation and the plaintiff's right to compensation for damages, with the new case limited to determining the amount thereof.

Whoever exercises his/her rights in accordance with paragraph one of this article, will not be entitled to file any other suit based on the same facts. Likewise, whoever does not reserve his/her rights referred to in the previous paragraph, will not be entitled to file any other suit based on the same facts.

.....

Article 54 E.- Once the deadline of ninety days established in article 54 C has expired and the common solicitor has been appointed, if necessary, the defendant will be served with all of the submissions of the interested parties, only so that within the deadline of ten consecutive days, he may controvert one or more of them in their capacities as members of the group. The resolution giving rise to the service will be notified in a daily statement. This deadline may be extended, once only, at the request of the party and with good grounds, if the judge considers it necessary.

If the judge deems that substantial, pertinent and controversial facts exist, he will open a period for deposing evidence which will be governed by the rules of the pleas.

An appeal for reversal may be filed against the resolution ruling on the plea, with a subsidiary appeal.

Once the plea has been sentenced in accordance with this article, the overall amount of the compensation or the redress the defendant has to pay will be irrevocably fixed.

Article 54 F.- The defendant shall redress or fully consign to the court's current account the amount of the compensation within a deadline of thirty consecutive days as from that on which the plea was sentenced in accordance with article 54 E.

Should the overall amount of the compensation, in the court's opinion, cause the defendant a significant monetary loss, in such a manner that he/she is close to insolvency, the judge may establish a monthly schedule of payments of the whole of the compensation for each plaintiff, indexed with current interest, depending on the date paid.

Nonetheless, in the case of the previous paragraph, the judge may determine compliance with an alternative method of payment.

In order to authorize payment of the compensation in any of the manners established in preceding paragraphs, the judge may, depending on the financial situation of the defendant, require a guarantee or some other kind of pledge.

There will be no appeal whatsoever against whatever resolutions are ruled by the judge in accordance with this article.

Article 54 G.- If the sentence is not complied with by the defendant, enforcement will be carried out through the common solicitor, in one sole procedure, for the whole amount referred to in the final paragraph of article 54 E or for whatever balance is still unpaid. The payment that has to be made in this procedure to each consumer will be done in proportion to their corresponding rights declared in the final sentence.

Article 57.- The National Consumer Service will be a public service functionally decentralized and segregated territorially in all of the regions of the country, with a legal identity and its own assets, under the supervision of the President of the Republic through the Ministry for Economy, Development and Reconstruction

Article 58.- The National Consumer Service shall make sure that the provisions of this law and any other rules related to the consumer are complied with, divulge consumer's rights and duties and see to it that the consumer is fully informed and educated.

The following will be specially up to the National Consumer Service to carry out:

- a) Prepare, undertake and develop information and education programs for the consumer,
- b) Conduct, in laboratories or special bodies of acknowledged seriousness, selective analyses of the products that are offered on the market in relation to their composition, net contents and other characteristics.

Those analyses costing more than 250 monthly tax units shall be conducted by laboratories or bodies chosen as a result of a public tender. In any event, the Service shall render a detailed and public account of the procedures and methodologies used when undertaking the functions found in this letter,

- c) Summarize, prepare, process, divulge and publish information to make it easier for the consumer to gain more knowledge about the characteristics of the sale of goods and services that are offered on the market. Whilst going about this duty, no attempt may be made against what is established in decree law N° 211 of 1973 which fixes the rules regarding the defense of free trading practices,
- d) Undertake and promote investigation into consumption,
- e) Keep the public record referred to in article 58 bis,
- f) Receive complaints from consumers who consider their rights have been trampled on and let the corresponding supplier know of this complaint so that he may volunteer to come and propose whatever alternative solutions he/she deems appropriate. On the basis of the reply from the supplier claimed, the National Consumer Service will sponsor a voluntary understanding between the parties. The document in which this agreement is set down will have the nature of an out-of-court transaction and it will put a stop, once all of its stipulations have been complied with, the action filed by the claimant to pursue the supplier's violatory liability,
- g) Make sure that all legal and regulatory provisions related to the protection of consumers' rights are complied with and take part in those cases that compromise the general interests of consumers.

The power to make sure that the rules established in special laws related to the consumer are complied with, include the attribution of the National Consumer Service to report possible noncompliances before the corresponding jurisdictional bodies or departments and to take part in those cases where the general interests of consumers are affected, according to whatever procedures are fixed in the general rules or which are pointed out in any special rules.

In the case of letter e) of article 2, the intervention of the National Consumer Service will be limited to those sales contracts of homes referred to in article 1 of Statutory Law N° 2 of 1959, concerning housing plans, whose final text was set down decree N° 1.101 of 1960 of the Ministry of Public Works.

Suppliers will be obliged to provide the National Consumer Service with whatever reports and background information they are asked for in writing and which are related to the basic commercial information defined in article 1 of this law, of whatever goods and services are offered to the public. Refusal to do so or an unwarranted delay in remitting the background information required will be punished with a fine of up to 200 monthly tax units. Any delay over five days as from when the deadline expires mentioned in the requirement, which may not be longer than thirty consecutive days, will be considered unwarranted.