

# **Law no. 8078 of September 11, 1990**

About consumer protection and other considerations

The President of the Republic, would like it known that the following Law has been Decreed by National Congress and ratified by me:

## **TITLE I - Consumer Rights**

### **CHAPTER I - General Considerations**

Art. 1. This Code sets forth the norms for consumer protection and defense, regarding public order and social interest, based on articles 5, paragraph XXXII, 170, paragraph V of the Federal Constitution in article 48 of its Transitional Dispositions.

Art. 2. A consumer is any physical person or corporate entity who acquires or uses a product or service as a final user.

Sole Paragraph. The concept and status of consumer is extended to a collective of individuals, that may even be indeterminate, who may have participated in consumer relations.

Art. 3. A supplier is any physical person or corporate entity, of a public or private nature, domestic or foreign, as well as other involved in the activities of production, assembly, creation, construction, transformation, importing, exporting, distribution, or commercialization of products or services.

§ 1. Product is any good, portable or real estate, material or immaterial.

§ 2. Service is any activity made available in the consumer market for which there is financial compensation of a bank, financial, credit, or insurance nature, except for those that are the result of work-related relations.

### **CHAPTER II - National Policy for Consumer relations**

Art. 4. The objective of the National Policy for Consumer Relations is to tend to consumers' needs, impose respect for the consumer's dignity, health, and safety, protect his interests and ensure transparency and harmony in consumer relations, based on the following principles: (text from Law no. 9008 of March 21, 1995)

I - recognition of the consumer's vulnerability in the consumer market;

II - government action in order to effectively protect the consumer;

through direct initiatives;

through incentives given towards the creation and development of representative associations;

through State presence in the consumer market;

through the guarantee that products and services will abide by adequate quality, safety, durability, and performance standards;

III - bringing together the interests of those participating in Consumer relations and making consumer protection compatible with the need for economic and technological development, so as to ensure the existence of the underlying principles of the economic order (article 170 of the Federal Constitution), which is always based on good faith and the balance of relations between consumers and suppliers;

IV - education and information given to suppliers and consumers, regarding their rights and duties, so as to improve the consumer market;

V - incentives given to suppliers so that they can create efficient ways to control the quality and safety of products and services, as well as alternative conflict resolution mechanisms within consumer relations;

VI - rationalization and improvement of public services;

VII - constant studies on consumer market changes.

Art. 5. For the execution of the National Policy for Consumer relations, the public power will, among others, perform the following tasks:

I - make complete and free judicial assistance available for consumers of a lower social status;

II - institute Public Prosecutor Offices for Consumer Defense within the Public Prosecution Service;

III - create police precincts specializing in helping consumers that have fallen victim to penal consumer-related infractions;

IV - create Special Small Claims Courts and Specialized Sections for solving consumption-related litigations;

V - provide stimuli for the creation and development of consumer Defense associations.

§ 1. (Vetoed).

§ 2. (Vetoed).

### **CHAPTER III - Basic Consumer Rights**

Art. 6. The following are basic consumer rights:

I - the protection of the consumer's life, health, and safety against any risks arising from any practices when buying supplied products and services considered harmful or dangerous;

II - education and information about the adequate level of consumption for products and services, ensuring freedom of choice and equality in hiring processes;

III - adequate and clear information about different products and services, with correct specifications for quantity, characteristics, composition, quality and price, as well as any risks involved;

IV - protection against misleading and abusive publicity, commercial methods based on coercion or in any other way unlawful, as well as against practices and causes that are abusive or imposed as part of the products and services being supplied;

V – the changing of contract clauses that institute disproportionate installments or revising them based on supervening facts that make them exceedingly expensive;

VI - effective prevention and reparation for damage against pecuniary, moral, individual, collective, and diffused damage;

VII - access to judiciary and administrative entities so as to prevent or provide compensation for pecuniary, moral, individual, collective, and diffused damage, thus ensuring the judicial, administrative, and technical protection given to those in need;

VIII - protection of consumer rights facilitated, by shifting the burden of proof in favor of the consumer in a civil action when the judge finds that the accusation holds truth or when he is unable to satisfactorily fulfill its obligations according to ordinary rules from experiences.

IX – (Vetoed);

X - deliver general public services adequately and effectively.

Art. 7. The rights set forth in this Code do not exclude any others that may come as a result of international treaties or conventions ratified by Brazil, of internal legislation, regulations set forth by administrative authorities with jurisdiction, as well as any other rights that stem from the general principles of Law, analogy, traditions and fairness.

Sole paragraph. If more than one person was responsible for the offense, everyone will be held responsible for settling the damages as foreseen by consumption norms.

## **CHAPTER IV - Quality of Products and Services and Damage Prevention and Reparation**

### **SECTION I - Health and Safety Protection**

Art. 8. Products and services made available in the consumer market will not bring risks to consumers' health or safety, except those considered normal and predictable as a result of the very nature of the product or service. Suppliers are obliged, under all circumstances, to provide the adequate necessary information about such products and services.

Sole paragraph. Referring to industrial products, the manufacturer is responsible for supplying the information mentioned in this article, through the appropriate printed material that must accompany the product.

Art. 9. Those supplying products and services that are present potential health or safety risks or danger must clearly and extensively inform this risk or danger, as well as any other measures that may be necessary, on a case-by-case basis.

Art. 10. Supplier may not make available to the market any product or service that is known to present a high level of harm or danger to health or safety.

§ 1. The products or services supplier who gains knowledge of harm or danger presented by a product or service previously placed in the consumer market must immediately communicate this fact to the proper authorities and to consumers, through the use of advertisements.

§ 2. The advertisements mentioned in the previous paragraph will be shown in the media, radio, and television, and will be at the charge of the product or service supplier or provider.

§ 3. Whenever suppliers learn that services or products may present a health or security risk to consumers, the Federal Government, the States, the Federal District and Municipalities, must inform the appropriate parties about it.

Art. 11. (Vetoed).

## **SECTION II - Liability over the Fact of the Product and Service**

Art. 12. The manufacturer, producer, builder (whether domestic or foreign), and the importer are liable, regardless of guilty, for the reparations for harm caused to consumers due to defects linked to product project, manufacture, construction, assembly, formulas, manipulation, presentation or acclimatizing conditions, as well as lack of information or providing inadequate information about public use and risks.

§ 1. A product is defective when it does not offer the safety that would generally be expected from it, taking into consideration the relevant circumstances, amongst which are:

I - product presentation;

II - the use and risks that are reasonably expected from the product;

III - the date when it was released.

§ 2. A product cannot be considered defective because another product of superior quality has been placed in the market.

§ 3. The manufacturer, builder, producer or importer will not be held accountable when he can prove that:

I - he did not put the product in the market;

II - even though the product has been placed in the market, the said defect does not exist;

III - is exclusively the consumer's fault or the fault of third parties.

Art. 13. The supplier is equally responsible, in light of the previous article, when:

I - the manufacturer, the builder, the producer or the importer cannot be identified;

II - the product is being supplied without clearly identifying its manufacturer, producer, builder, or importer;

III - he does not adequately conserve perishable products.

Sole paragraph. The person or entity responsible for paying the damaged party will then be eligible to demand reparations from the other parties responsible, due to their participation in causing the damaging event.

Art. 14. The service supplier will be responsible, regardless of the existence of guilt, for providing the necessary reparations for the damage caused to consumers due to any defects pertaining to service provision, as well as for insufficient or inadequate information about the nature of the service and the risks involved.

§ 1. The service is deemed defective when it does not provide the safety level expected by the consumer, taking into consideration relevant circumstances such as:

I - the way it was supplied;

II - the results and risks reasonably expected from it;

III - the date when it was provided.

§ 2. The service cannot be considered defective as a result of new techniques being adopted.

§ 3. The service supplier will be held unaccountable only when he is able to prove:

I - the fact that, having provided the service, the defect does not exist;

II -the defect is exclusively the consumer's fault or the fault of third parties.

§ 4. The personal liability of autonomous professionals will be assessed based on the verification of guilt.

Art. 15. (Vetoed).

Art. 16. (Vetoed).

Art. 17. For the purposes of this section, all victims of the event have the same rights as consumers.

### **SECTION III - Liability over Product or Service Defect**

Art. 18. Suppliers of durable or nondurable consumer goods will answer for any quality or quantity defects that make these goods inadequate for their purpose or that diminish their value, as well as any defects resulting from the product being different from what is expected, from what is indicated in the packaging, label, or advertisement, taking into account any variations that may be a result of the goods very nature. The consumer has the right to demand substitution of any defected parts.

§ 1. If the problem of the defect is not solved within 30 days, the consumer may demand one of the following, according to his preference:

I - substitution of the product for another product of the same nature, in perfect condition;

II - the immediate return of the money paid, with any monetary adjustments, with no loss due to the eventual losses or damages;

III - a discount proportional to the defect.

§ 2. The involved parties may agree on a reduction or expansion of the time frame mentioned in the previous paragraph, as long as this time frame is not shorter than seven days and not longer than 180 days. In adherence contracts, the clause pertaining to the timeframe must be included separately, through a written declaration from the consumer.

§ 3. Depending on the type of defect, the consumer may make immediate use of the alternatives in the first paragraph of this article, whenever the substitution of defected parts may compromise the quality or characteristics of the product, diminish the value of the product or when the product is otherwise essential.

§ 4. If the consumer chooses the alternative mentioned in item I in §1 of this article, and if the substitution of the product is not possible, substitution can be made for a product of another type, brand, or model, by complimenting for receiving back any differences in price, without losing the rights set forth by items II and III in § 1 of this article.

§ 5. In the case that the products being supplied are in natura, the immediate supplier will be responsible for any damages caused to the consumer, except when the producer of this product a clearly identified.

§ 6. The following are deemed unfitting for use and consumption:

I - any expired product;

II - products that have deteriorated, been altered, changed, damaged, falsified, corrupted, products that include a type of fraud, that are harmful to life or health, dangerous, or even those that did not abide by manufacturing, distribution or presentation rules;

III – products that, for any reason, may be inadequate for the purposes for which it was intended.

Art. 19. Suppliers will be liable for any quality defects in a product whenever its liquid content is lower than the constant indications in the recipient, the aging, the label, or the advertisement, taking into account any variations as a result of the product's nature. The consumer has one of these choices:

I – a proportional discount and the price;

II - demand that the appropriate weight or amount that has been left out be re-included in the recipient;

III - the substitution of the product for another of the same type, brand, or model, without any defects;

IV - immediate restitution of the amount paid, with monetary adjustments.

§ 1. The text of § 4 in the previous article applies to this article as well.

§ 2. The immediate supplier will be responsible when the tool used for weighing or measuring is not in accordance to official standards.

Art. 20. The service supplier will be responsible for any quality defects that make the product unsuitable for consumption or that may diminish its value, as well as any defects that arise due to there being differences between the product and what was offered or advertised. In this case, the consumer has one of these choices:

I - the re-execution of services without any additional costs, whenever suitable;

II - immediate restitution of the money paid, with any monetary adjustments, with no loss due to eventual losses or damages;

III - a proportional discount in price.

§ 1. Service re-execution may be delegated to qualify third parties. The costs and risks are incurred by the original service provider.

§ 2. Any services that fail to obtain the expected results will be deemed improper, as well as those that are not in accordance to service provision regulations.

Art. 21. In any service that is being supplied as reparation for any type of product, the supply will be required to use original components that are new and adequate for the reparation, or to use the technical specifications set forth by the manufacturer, except when such is not authorized by the consumer.

Art. 22. Public agencies, by themselves or through their companies, service providers, or any other form of entrepreneurship, will be required to provide products that are adequate, efficient, safe and, regarding the essential, continuous.

Sole paragraph. In the case that the obligations mentioned in this article are not followed, totally or partially, corporate entities will be compelled to obey them and provide reparations for any damages caused, in accordance to what is set forth by this Code.

Art. 23. Lack of knowledge on the part of the supplier about any quality defects pertaining to products or services will not waive liability from the supplier.

Art. 24. A legal guarantee regarding the suitability of the product or service being delivered need not be explicitly mentioned. This cannot exempt the supplier from his contractual obligations.

Art. 25. Any clause seeking to exempt, hinder, or lighten the obligation to provide the reparations mentioned in this article, as well as previous ones, is forbidden.

§ 1. If there is more than one party responsible for causing the damage, all parties involved will collectively be responsible for the reparations mentioned in this section, as well as previous sections.

§ 2. If the damage is caused by a component that is part of the product or service, then the builder, supplier, or importer, as well as the one who introduced this component, may collectively be held responsible.

#### **SECTION IV - Loss of procedural rights and Prescription**

Art. 26. The right to complain about a parent or easily noticeable defects can be invoked within:

I - thirty days, regarding services and non-durable goods;

II - ninety days, regarding services and durable products.

§ 1. These periods of time are counted as of the moment when the product is effectively delivered or when the services are finished.

§ 2. Factors that counter the loss of procedural rights:

I - a complaint satisfactorily formulated by the consumer in regards to the product or service provider until the respective and unmistakable receiving of a negative answer;;

II – (Vetoed).

III – a civil inquiry.

§ 3. When the defect is not visible, the time period for complaints begins on the moment when the defect is the noticed.

Art. 27. The claim for reparations due to damage caused by a product or service, as foreseen on Section II of this Chapter, will prescribe after five years. This time will be counted as of the moment when product or service failure, as well as the party responsible becomes known.

Sole paragraph. (Vetoed).

#### **SECTION V - Disregarding Corporate Entity**

Art. 28. A judge may this disregard the corporate entity of a partnership when there has been an abuse or excess use of power, unlawful, or any violation of statutes or the social contract in detriment of the consumer. This can also happen in the case of bankruptcy, insolvency, the closing of activities or even inactivity by the corporate entity due to bad management.

§ 1. (Vetoed).

§ 2. Groups that are part of any partnerships or controlled partnerships are also responsible for upholding this Code.

§ 3. Consortium partnerships are responsible for upholding this Code.

§ 4. Co-linked partnerships will only be held accountable for fault.

§ 5. A corporate entity may also be disconsidered when its very essence constitutes, in some way an obstacle to the giving of reparations for damage caused to consumers.

## **CHAPTER V - Commercial Practices**

### **SECTION 1 - General Provisions**

Art. 29. Any persons exposed to what is described in this chapter and the next will be considered equal to consumers.

### **SECTION II - Offer**

Art. 30. A sufficiently precise information or advertisement, broadcast through any means of communication pertaining to products or services being offered or displayed makes the person who is making the offer responsible for upholding it.

Art. 31. The offer and the presentation of products and services must contain information that is clear, direct, precise, comprehensive, and in the Portuguese language regarding the characteristics, qualities, quantity, composition, price, warranty, validity and origin, among other pieces of information, as well as any risks that the product or service may pose to the consumer's health and safety.

Art. 32. Manufacturers and importers must make replacement parts available for as long as the product in question is still being manufactured or imported.

Sole paragraph. When production or importation is halted, the offer of replacement parts must be maintained for a reasonable time period, in the form of the Law.

Art. 33. In case of an offer or a sale by telephone or mail, the manufacturer's name and address must be displayed in the package, advertising material, and all printed material used in the commercial transaction.

Art. 34. The product or service supplier is responsible for the actions of his autonomous representatives.

Art. 35. If the product or service supplier refuses to maintain the offer, product presentation or advertisement, the consumer may choose one of the following courses of action:

I - demand that the product or service be delivered as offered in the product presentation, advertisement, or offer;

II - accept another equivalent product or service;

III - cancel the contract while remaining eligible for reparations for losses in damages, financially updated.



### **SECTION III - Advertising**

Art. 36. Publicity must be shown in such way that the consumer will easily and immediately identify it as such.

Sole paragraph. A supplier, in the advertising campaigns of its products and services, will make any documents that give basis to the technical and scientific information displayed available upon request.

Art. 37. Any misleading or abusive advertising campaigns are prohibited.

§ 1. Any information or public communication that is entirely or partially false or is in any way, even through omission, capable of inducing the consumer to make a mistake regarding the nature, characteristics, quality, quantity, properties, origin, price, and any other information about products and services will be considered misleading.

§ 2. An advertisement of any discriminatory nature, or that incites violence, explores fear or superstition or takes advantage of a child's lack of judgment or experience, disrespect environmental values or may cause the consumer to behave in a way that will bring harm to his health or safety would be considered abusive.

§ 3. In this Code, misleading information includes failure to mention essential information about the product or service.

§ 4. (Vetoed).

Art. 38. The burden of proof regarding the truthfulness and correction of the information or public communication will be the Liability of its sponsor.

### **SECTION IV - Abusive Practices**

Art. 39. Forbidden abusive practices by the products or service provider includes: (text from Law no. 8884 of June 11, 1994)

I - conditioning product or service delivery to the delivery of another product or service as well as specific quantitative limits without just cause;

II – refusing to answer the demand from consumers regarding the quantity available in stock and, also, the conformity with uses and customs;

III - sending or handing any product or service to the consumer without it having been requested;

IV - taking advantage of any weakness or ignorance on the part of the consumer, with respect to his age, health, knowledge or social condition, in order to impose its products or services;

V - demanding an excessive advantage from the consumer;

VI - executing services without having put together a budget and obtained explicit authorization from the consumer;

VII - forwarding derogatory information referring to something done by the consumer while exercising his rights;

VIII - inserting any product or service into the consumer market that is not in accordance with the norms set forth by official agencies or, in case these norms do not exist, by the

Brazilian Technical Norms Association – ABNT or another entity accredited by the National Metrology, Normalization and Industrial Quality Council (Conmetro);

IX - refusing to sell goods or providing services to anyone willing to acquire them and who is ready to pay for them except those cases that fall under the jurisdiction of special Laws; (text from Law no. 8884 of June 11, 1994)

X - increasing product or service price without just cause (included through Law no. 8884 of June 11, 1994);

XI - section added by Provisional Measure no. 1890-67 of October 22, 1999 transformed into Item XIII when it was converted into Law no. 9870 of November 23, 1999;

XII - not establishing a deadline for the delivery of his obligations or being the sole decider over the deadline (item added by Law no. 9008 of March 21, 1995);

XIII - applying a readjustment formula or index that is not in accordance to legal indices or what has been established in the contract (item added by Law no. 9870 of November 23, 1999).

Sole paragraph. The concept of products or services delivered to the consumer in the hypothesis described on item III extends to free samples, for which there was no payment.

Art. 40. Before performing the service, the service provider must first give the consumer a budgetary list including the price of manpower, necessary materials and equipment, payment conditions, as well as specific begin and end dates for the service.

§ 1. The price in the aforementioned budgetary list will be valid for 10 days as of the moment when it is received by the consumer, except when another time frame is commonly agreed upon by both parties.

§ 2. Once the budget has been approved by the consumer, the contracted parties will have to abide by it. This value may only be changed through free negotiation between the parties involved.

§ 3. The consumer will not be held responsible for any additional expenses as a result of hiring third parties or any other activities not foreseen in the budgetary list compiled previously.

Art. 41. In the case of products and services that are subject to specific price tables or control regimes, suppliers will respect the official limits. If they do not they will be responsible for returning the amount that was received in excess, with financial adjustments. The consumer may decide, at his discretion, to have the contract canceled, while any other applicable sanctions remain in place.

## **SECTION V - Collecting Debts**

Art. 42. With respect to debt collection, a consumer who is in debt will not be exposed to ridicule or threats.

Sole paragraph. The consumer that is charged for a wrong amount has the right to receive back from the supplier twice the amount that he paid in excess adjusted monetarily and by legal interest rates, except in the case when it is a justifiable error.

## **SECTION VI - Consumer Registration and Databases**

Art. 43. The consumer, without penalty from what is said on article 86, will have access to information that exists in registries, forms, and personal consumption data that has been reported about him, as well as their respective sources.

§ 1. Consumer registrations and data must be objective, clear, truthful, and in a language that is easy to understand. It may not contain negative information referring to a date over five years prior.

§ 2. The consumer's consent must be sought in writing before the opening of a file, record, or any personal and consumption data, in case it has not been requested by the consumer.

§ 3. If the consumer finds inaccurate information about himself in a file or record, he may demand its immediate correction. The party maintaining the file or record will have five weekdays to communicate the change of this incorrect information to any parties involved.

§ 4. Consumer related databases in registries, as well as credit protection services and other services of the same nature are considered public entities.

§ 5. Once any debt collection issues expire on the consumer's records, the respective Credit Protection System shall not make any information available that may keep the consumer from obtaining new credit from suppliers.

Art. 44. Public consumer defense agencies will keep an updated record of complaints against product and service providers, and must publicly divulge this information on a yearly basis. This information will indicate whether or not this complaint was resolved by the supplier.

§ 1. This information will be available for consultation by any interested parties.

§ 2. When applicable, the same rules described in the previous article and in the sole paragraph of article 22 of this Code will apply.

Art. 45. (Vetoed).

## **CHAPTER VI - Contract Protection**

### **SECTION I - General Considerations**

Art. 46. Contracts that regulate consumer relations will not oblige consumers, if to the consumer is not given previous knowledge of the content or if the text is worded so as to hinder comprehension of meaning or scope.

Art. 47. Contract clauses will be interpreted in the way that is most favorable to the consumer.

Art. 48. Constant written declarations of intent, receipts, and pre-contracts relating to consumer relations will make the supplier responsible and liable in accordance to article 84 and paragraphs.

Art. 49. The consumer may desist from a contract in a period of up to seven days after the moment when the contract is signed or when the product or service is delivered, whenever the product or service is hired outside a commercial establishment, especially through a phone or house visit.

Sole paragraph. If the consumer decides to use his right to desist from the contract as foreseen in this article, any amounts that have been paid, for any reason, during the reflection period will be returned immediately, with financial adjustments.

Art. 50. Contracts warranty is complementary to legal warranty and will be made available through a written declaration.

Sole paragraph. The terms of the warranty must be standardized and must make the nature of the warranty clear; what it consists of, as well as the procedure, time periods and the places for claiming the warranty, as well as any fees that must be paid by the consumer. This information must be handed to the consumer together with the instructions and installation manual and be easy to understand, with illustrations.

## **SECTION II - Abusive Clauses**

Art. 51. Any clauses that impose any of the following situations, among others, will be nullified:

I - Remove, exonerate, or lighten the supplier's liability for defects of any nature in the products or services delivered or that renounce any rights. In any consumer relationship between the supplier and a consumer that is a corporate entity, the compensation may be limited, in justifiable situations;

II - Void consumers' option for the reimbursement of any amounts paid, in the cases foreseen by this Code;

III - Transfer responsibilities to third parties;

IV – establish any obligations considered unfair, abusive or that may place the consumer in an exaggeratedly disadvantageous situation or be incompatible with the principles of good faith and equity;

V – (Vetoed);

VI - transfer the burden of proof to the consumer;

VII - determine the compulsory use of arbitration;

VIII - impose that a third party represent the consumer in concluding or undertaking any other judicial obligation, on behalf of the consumer;

IX - give the supplier the option of concluding or not the contract, while still binding the consumer to his obligations;

X - enable the supplier to directly or indirectly make unilateral price changes;

XI - authorize supplier to unilaterally cancel the contract, without the same right being given to the consumer;

XII - oblige the consumer to repay any costs incurred in the process of collecting the debt, if the same right is not also given to the consumer against the supplier;

XIII - authorize the supplier to unilaterally change the content or the quality of the service, after the contract has been signed;

XIV - break any environmental Laws or make it possible for these Laws to be broken;

XV - be in disagreement with the consumer protection system;

XVI - void the right to reimbursement when necessary fixtures have taken place.

§ 1. Any advantage will be considered exaggerated if, among others, it fits the following criteria:

I - offends the fundamental principles of the judicial system;

II - restricts fundamental rights or obligations inherent to the contracts nature, so as to threaten the contract's objective or balance;

III - is exceedingly costly for the consumer, considering the contracts nature, the interests of both parties, and other circumstances that may be pertinent to the case.

§ 2. If an abusive contract clause is nullified, this does not void the contract, except when absence of that clause, despite any integration efforts, results in excessive cost to any of the parties involved.

§ 3. (Vetoed).

§ 4. Any consumer or entity representing the consumer may require the Public Prosecution Service to take the appropriate measures to nullify the clause in the contract that goes against what is set forth by this Code or that in any way fails to ensure a just balance in the rights and obligations of both parties.

Art. 52. In any services or products that involve credit or financing being given to the consumer, the supplier must, among other prerequisites, previously inform the consumer about the following:

I - product or service price, in current domestic currency;

II - culpable delay interest rates and effective yearly interest rates;

III - extra costs that are legally foreseen;

IV - number and frequency of installment payments;

V - the total amount to be paid, with and without financing.

§ 1. Culpable delay fines for the young fulfillment of contract obligations may not go over 2% of the total installment value. (Text from Law no. 9298 of August 1, 1996)

§ 2. Previous credits liquidation is ensured to the consumer, totally or partially, if there is a proportional reduction in interests and other extra costs.

§ 3. (Vetoed).

Art. 53. In real estate sale and purchase contracts that involve the payment of installments, as well as any fiduciary guarantees, any clauses that establish total loss of installments to benefit the creditor who, due to lack of payment, demands contract resolution and a return of the said product will be void.

§ 1. (Vetoed).

§ 2. In contracts of consortium systems that involve durable products, compensation or restitution of installments will have a discount proportional to the economic advantage gained from fruition, and the losses that the non-paying or desisting brings customer to the group.

§ 3. The concept of contract mentioned in the heading of this article will be expressed in the current national currency.

### **SECTION III - Adhesion Contracts**

Art. 54. An adhesion contract is a contract whose clauses have been approved by the competent authority or established unilaterally by the product or service supplier without the consumer having had a chance to substantially change its content.

§ 1. The insertion of clause in the form does not change the adhesion nature of the contract.

§ 2. Adhesion contracts may have resolution causes, as long businesses approved by the consumer, as per the text of § 2 in the previous article.

§ 3. Adhesion contracts will be written using clear language and legible characters, in order to facilitate comprehension by the consumer.

§ 4. Clauses that limit consumers' rights will be specially highlighted, so that they can be quickly and easily understood.

§ 5. (Vetoed).

### **CHAPTER VII - Administrative Sanctions**

Art. 55. The Country, the States and the Federal District, in line with their respective areas of administrative jurisdiction, will pass norms referring to the production, industrialization, distribution and consumption of products and services.

§ 1. The Federal Government, the States, the Federal District and Municipalities will monitor and control production, industrialization, distribution, product and service advertisement and the consumer market, in the interest of preserving the consumer's life, health, safety, information, and well-being, by issuing any norms that become necessary.

§ 2. (Vetoed).

§ 3. Federal Government, State, and Municipal Agencies, as well as those in the Federal District, liable for monitoring and controlling the consumption market will maintain permanent commissions to devise, revise and update the norms referred to in § 1. Consumer and supplier participation is mandatory.

§ 4. Official agencies may issue notifications to suppliers so that they make available any information that is of interest to the consumer, except for industrial secrets, under penalty of suffering sanctions.

Art. 56. Any infraction against consumer Defense norms becomes subject, depending on the case, to the following administrative sanctions, not excluding any civil, penal, or any other sanction defined in specific norms:

I – fine;

II - product apprehension;

III - product deactivation;

IV - annulment of the product Registry at the appropriate agency;

V - prohibition against manufacturing the product;

VI - suspension of product or service delivery;

VII - temporary suspension of activities;

VIII - the revoking of concessions for usage license

IX - the revoking of commercial establishment license or activity license;

X - the total or partial closing of the establishment, work in progress, or activity;

XI - administrative intervention;

XII – counter-advertising imposition;

Sole paragraph. The sanctions mentioned in this article will be applied by the administrative authority, in the scope of its attributions, and can be applied cumulatively, and also through provisional remedy, before or after the administrative procedure.

Art. 57. The fine, calculated based on the seriousness of the infraction, the advantage obtained, and the economic status of the supplier, will be applied as a result of an administrative procedure, and the amounts owed to the country will be reverted to the Fund stipulated by Law no. 7347 of July 24, 1985, or to state and municipal consumer protection funds in all other cases. (Text from Law no. 8656 of May 21, 1993)

Sole paragraph. The value of the fine will be no lower than 200 no higher than 3 million times the value of the Fiscal Reference Unit (UFIR), or any other unit that may come to substitute the UFIR. (Paragraph added by Law no. 8703 of September 6, 1993)

Art. 58. The sanctions of product apprehension, deactivation or disassembly, as well as revoking product manufacture license, product registry, concession or usage license will be applied by the administration, through an administrative procedure in which ample defense will be provided to the defendant, when quality or quantity Defects are been acted as a result of product or service inadequacy or lack of security.

Art. 59. The sanctions of revoking license, temporary suspension of activities, as well as administrative intervention, will be applied through an administrative procedure in which ample defense will be provided to the defendant, when the supplier relapses and more serious infractions against this Code and consumption legislation are detected.

§ 1. A public services provider will have its license revoked when it violates a legal or contract obligation.

§ 2. The sanction of administrative intervention will be applied whenever circumstances make it advisable to revoke the license, or suspend activities.

§ 3. During the period when an administrative penalty is being considered no relapses will be considered as relapses until a verdict is reached.

Art. 60. Counter advertising will be imposed if the supplier makes use of misleading or abusive information in advertising, ask for article 36 and its paragraphs. This will occur at the supplier's expense.

§ 1. The counter advertising will be shown in the same manner, frequency, and dimensions and, preferably, through the same media outlet, location, space, and time, so as to undo the malignant effects of misleading or abusive advertising.

§ 2. (Vetoed).

§ 3. (Vetoed).

## TITLE II - Penal Infractions

Art. 61. The following are considered crimes against consumer relations as foreseen by this Code, not excluding the determinations of the Penal Code and special Laws:

Art. 62. (Vetoed)

Art. 63. Affix labels or signs about product dangers or unsafe aspects onto the labels, wrappings, receptacles, or advertising material:

Sentence - six months to two years of imprisonment and a fine.

§ 1. The same sentence will apply to those who fail to alert, through comprehensive written recommendations, about the dangers of the service about to be delivered.

§ 2. If the crime had no intent:

Sentence - one to six months of imprisonment or a fine.

Art. 64. Fail to communicate to the competent authorities and consumers about the harm or danger levels pertaining to the product, that become known after the product has already been placed in the market.

Sentence - six months to two years of imprisonment and a fine.

Sole paragraph. The same sentence will apply to those who fail to remove dangerous or harmful products from the market as soon as this is demanded by the competent authorities.

Art. 65. Execute services involving high degrees of danger, against the determination of the competent authorities:

Sentence - six months to two years of imprisonment and a fine.

Art. 66. Make false or misleading statements, or omit relevant information about the nature, characteristics, quality, quantity, safety, performance, durability, price, or warranty of products and services:

Sentence - three months to one year of imprisonment and a fine.

§ 1. The same sentence will be applied to those who endorse the offer.

§ 2. If the crime had no intent:

Sentence - one to six months of imprisonment and a fine.

Sole Paragraph. (Vetoed).

Art. 68. Engage in any promotional activities that may cause the consumer to behave in a way that is harmful and dangerous to his health or safety:

Sentence - six months to two years of imprisonment and a fine.

Sole paragraph. (Vetoed).



Art. 69. Failure to have factual, technical, and scientific data on which to base advertisements:

Sentence - one to six months of imprisonment or a fine.

Art. 70. The use of secondhand replacement parts to fix products without consumer authorization.

Sentence - three months to one year of imprisonment and a fine.

Art. 71. When collecting debts, making use of threats, coercion, physical or moral abuse, false, incorrect, or misleading statements or any other procedure that unfairly exposes the consumer to ridicule or that may interfere with his work, rest, or leisure:

Sentence - three months to one year of imprisonment and a fine.

Art. 72. Block or hinder access by the consumer to information about him that may be available in registries, databases or forms:

Sentence - six months to one year of imprisonment or fine.

Art. 73. Failure to immediately correct information about the consumer that is known to be inaccurate in a database, form or registry:

Sentence - one to six months of imprisonment and a fine.

Art. 74. Failure to hand an appropriately filled-out warranty form to the consumer, clearly specifying its contents:

Sentence - one to six months of imprisonment or fine.

Art. 75. The penalties assigned to those who commit crimes against this Code will be based on the seriousness of the fault, as well as the director, manager, or administrator of the corporate entity that promotes the crime, allows it, or in any other way approves the supplying, offering, selling or storing products or services that are in any way prohibited.

Art. 76. The following are aggravating circumstances for the crimes listed in this Code:

I - crimes that are committed in times of grave economic crisis or calamities;

II - crimes that result in grave individual or collective damage;

III - instances in which the illicit nature of the actions is concealed;

IV - when these crimes are committed:

a) by a public servant, or by any person whose economical or social standing is higher than the victim's;

b) against field or rural workers; against persons under 18 years of age or over 60 years of age or persons with mental impairments;

V - when committed in operations involving food, medication, or any other essential product or service.

Art. 77. The monetary fine relative to the section will be based on "fine days", with a duration corresponding to the minimum and the maximum number of days, which is specific to each crime. When establishing a detention period or monetary fine, the judge shall follow the text on article 60, paragraph 1 of the Penal Code.

Art. 78. As well as imprisonment and fines, the following sanctions can also be imposed, either cumulatively or alternately, in accordance to articles 44 to 47 of the Penal Code:

I – temporarily revoking of rights;

II - publishing of the news about the facts and the conviction in widely seen media, at the convicted party's expense;

III - the rendering of community services.

Art. 79. The bail value for infractions listed in this Code will be determined by the judge or by the authority presiding over the inquiry, and will be between 100 and 200,000 times the value of the National Treasury Bonus (BTN), or any equivalent index that may come to substitute it.

Sole paragraph. Depending on the defendant's economic status, the bail may be:

- reduced up to half its minimum value;
- increased up to 20 times by the judge.

Art. 80. For penal procedures pertaining to the crimes listed in this Code, as well as any other crimes and contraventions that involve consumer relations, the legitimate parties indicated on article 82, items III and IV, are authorized to intervene as assistants of the Public Prosecution Service. They are also authorized to propose subsidiary penal actions, if the denunciation is not offered within the legal time period.

### **TITLE III - Consumer Defense in Court**

#### **CHAPTER I - General Considerations**

Art. 81. The defense of victims' best interests and rights can be exercised in court individually or collectively.

Sole paragraph. Collective defense will be used when the case includes:

I - interests or diffuse rights, in other words, in the the scope of this Code, trans-individual rights of an indivisible nature in which the parties involved are indeterminate persons connected by circumstances of fate;

II - collective interests or rights, in other words, in the, the scope of this Code, trans-individual rights of an indivisible nature, in which the involved party is a group, category or class of people connected amongst each other or with the defending party through a judicial relationship;

Art. 82. Referring to article 81, sole paragraph, the legitimate agencies are: (text from Law no. 9008 of March 21, 1995)

I - the Public Prosecution Service;

II - the Federal Government, the States, Municipalities, and the Federal District;

III - agencies and entities connected directly or indirectly to the public administration, even if not corporate entities; more specifically, those aimed at defending the interests and rights of those protected by this Code;

IV - legally constituted associations that have been in operation for at least one year and whose institutional goals include the defensive of interests and rights protected by this Code, in which case there is no need for assembly.

§ 1. The pre-constitutional requisite may be waived by the judge, in actions foreseen by articles 91 and subsequent, when there is manifest social interest made evident by the dimensions or characteristics of the damage or by the relevance of the judicial interest to be protected.

§ 2. (Vetoed).

§ 3. (Vetoed).

Art. 83. In order to defend the rights and interests protected by this Code, all sorts of actions capable and enforcing the Code are permissible.

Sole paragraph. (Vetoed).

Art. 84. In those judicial actions that seek to enforce the obligation to do or not to do something, the judge will make a ruling specifically based on the obligation or will determine measures that will ensure a practical resolution for the damaged caused.

§ 1. The conversion of an obligation into losses will only be admitted if the author chooses that option or if passing a specific ruling or obtaining an equivalent practical resolution is impossible.

§ 2. The compensation for losses will not exclude a fine (article 287 of the Code of Criminal Procedure).

§ 3. In case there is any doubt as to whether the final ruling will be fulfilled, the judges authorized to pass his ruling through a "ex parte" preliminary injunction, after previous notification of the defendant.

§ 4. In the case of § 3 or in the ruling, the judge may impose a daily fine to the defendant, regardless of whether or not the author of the lawsuit has originally asked for it, if the judge deems it sufficient or compatible with the obligation. The judge will then establish a reasonable deadline for the ruling to be followed.

§ 5. In order to enforce a specific ruling or to obtain an equivalent practical result, the judge may determine such necessary measures as search and apprehension, removal of objects or persons, undoing of a specific service, barring harmful activities, as well as utilizing police force.

Art. 85. (Vetoed).

Art. 86. (Vetoed).

Art. 87. In the collective Lawsuits mentioned in this code, there will not be down payments, gains, expert fees or any other expenditures for the author of the lawsuit, except for cases where he did not act in good faith, in lawyer fees, expenditures or lawsuit fees.

Sole paragraph. In case of bad faith, the author and the directors responsible for the lawsuit will be condemned to pay lawyer fees and other expenses, not excluding any other liability for losses.

Art. 88. In the case mentioned in article 13, sole paragraph of this code, action or suit to recovers may be done autonomously.

Art. 89. (Vetoed).

Art. 90. The norms of the Code of Civil Procedure and Law no. 7347 of July 24, 1985 apply to the actions listed in this Title, including those having to do with civil inquiries.

## **CHAPTER II - Class Actions for Defending the of Homogenous Individual Interests**

Art. 91. The legitimate parties mentioned in article 82 may propose, on behalf of itself or the interest of the victims or their successors, a collective civil liability action for damage incurred collectively, according to the text of the following articles. (Text from Law no. 9008 of March 21, 1995)

Art. 92. The public prosecution service, if not heading the lawsuit, will always act as an overseer of the Law.

Sole paragraph. (Vetoed).

Art. 93. Taking into account the jurisdiction of the Federal Justice, the following are competent for enforcing local justice:

I - the judicial forum of the location in which the damaged happened or will happen, when it is of local scope;

II - the judicial forum of the Capital of State or of the Federal District, for damages of a national or regional scope, applying the rules of the Code of Criminal Procedure.

Art. 94. Once the lawsuit is initiated, they will be published by the official agency, so that the interested parties can intervene in the process. It will also be divulged by other social communication means, by consumer defense agencies.

Art. 95. In case the request is legitimate, the ruling will be generic, and the defendant will be held responsible for the damages caused.

Art. 96. (Vetoed).

Art. 97. The sentence can be carried out or executed by the victim and his successors, as well as by the legitimate agencies listed on article 82.

Sole paragraph. (Vetoed).

Art. 98. The execution can be collective, promoted by the legitimate parties that are listed on article 82, encompassing victims whose compensations have already been fixed by a liquidation sentence, without excluding other executions. (Text from Law no. 9008 of March 21, 1995).

§ 1. Collective execution will be based on a certificate containing the liquidation sentence, which will contain the sentence.

§ 2. The following are options for executing the sentence:

I - sentenced liquidation or condemnatory, in the case of individual execution;

II - condemnatory action, in the case of a collective execution.

Art. 99. In the case of credit resulting from condemnation mentioned in Law no. 7347 of July 24, 1985, and compensation for individual losses resulting from the same damaging event, these will receive preference in the payment process.

Sole paragraph. For the purpose of this article, the transfer of the amounts collected by the fund created by Law no. 7347 of July 24, 1985 will be suspended while second-degree lawsuits pertaining to individual damage are still being resolved, except in those cases when the total assets of the guilty party is enough to cover all the debts.

Art. 100. If one year transpires before an amounts compatible to the seriousness of the damage can be agreed upon, the agents legitimized by article 82 may promote liquidation in order to execute the compensation.

Sole paragraph. The product of the owed compensation will be reverted to the fund created by Law no. 7347 of July 24, 1985.

### **CHAPTER III - Lawsuits on Product or Service Supplier Liability**

Art. 101. In civil liability lawsuits against product and service providers, the following norms will be observed, without excluding what has been stated on Chapters I and II of this title:

I - the Lawsuit may be proposed at the author's local of residence;

II - any defendant who has hired liability insurance may call in the insurance company. In this case, a sentence that benefits the author will condemn the defendant according to the terms of article 80 of the Code of Civil Procedure. If the defendant has been declared bankrupt, the auditor will be required to inform the existence of liability insurance. In the case that there is liability insurance, the sentence may be imposed directly on the insurance company, without the need for a report to be sent to the Reinsurance Institute of Brazil or for a new lawsuit to be started.

Art. 102. The entities whose actions are legitimized by this code may propose a lawsuit action so as to compel the competent public power to prohibit, within national borders, the production, divulging, distribution, or sale of the product, or determine alterations in the composition, structure, formula, or conditioning of a product whose continued consumption may be harmful or dangerous to public health and personal well-being.

§ 1. (Vetoed).

§ 2. (Vetoed).

## CHAPTER IV - Object of the Ruling

Art. 103. In the collective lawsuits mentioned in this code, the ruling sentence will be:

I – erga omnes, except when the request is dismissed due to lack of proof, a hypothesis in which any legitimate party is allowed to start another lawsuit, but the same foundation, taking use of new evidence, as mentioned on item I of the sole paragraph of article 81;

II – ultra partes, but limited to the group, category, or class, except when the dismissal is due to the lack of proof, in the terms of the previous item, or when it deals with the hypothesis listed on item II of the sole paragraph of article 81.

III – erga omnes, only in the case when the lawsuit is accepted, in order to benefit all the victims and their successors, in the hypothesis mentioned in item III of the sole paragraph of article 81.

§ 1. The effects of the objective of the ruling mentioned in items I and II will not go against the interests or individual rights of the people integrating the collective, group, category, or class.

§ 2. In the hypothesis mentioned in item III, in case the request is dismissed, any interested parties who have not previously intervened in the process are allowed to initiate a compensation lawsuit individually.

§ 3. The effects of "res judicata" according to article 16, combined with article 13 of the Law 7347 of July 24, 1985 will not hinder any indemnisation lawsuits for damages incurred personally, proposed individually or in the form foreseen by this code. But, if the request is accepted, it will benefit victims and their successors, who will then be able to proceed to liquidation and execution, in accordance to articles 96 to 99.

§ 4. In the hypothesis mentioned in the previous paragraph, a condemnatory penal sentence becomes applicable.

Art. 104. Collective actions mentioned in items one and two of the sole paragraph of article 81 do not establish links between individual Lawsuits, but the effects of the erga omnes and ultra partes ruling that touch on items two and three of the previous article will not benefit the authors of individual lawsuits if their suspension is not announced in a period of 30 days, counted as of the moment when the results of the collective lawsuit become known.

## TITLE IV - The National Consumer Defense System

Art. 105. The National Consumer Defense System (SNDC) is composed by Federal, State, Municipal, and Federal District agencies, as well as private consumer defense entities.

Art. 106. The Consumer Protection and Defense Department of the Secretariat of Economic Law (Ministry of Justice), or any other federal agency that may come to substitute it, is a mechanism for coordinating National Consumer Defense System policies.

It is responsible for: (in accordance to nomenclature attributed by Decree number 2181 of March 20, 1997)

I - planning, devising, proposing, coordination, and executing national consumer protection policies;

II - receiving, analyzing, evaluating, and forwarding consultations, denunciations, or suggestions coming from representative entities or corporate entities from the public or private sector;

III - give constant guidance to consumers about their rights and guarantees;

IV - inform, raise awareness, and motivate consumers through different means of communication;

V - request the opening of a police inquiry to judicial police, in order to investigate crimes against consumers, in accordance to current legislation;

VI - work with the Public Prosecution Service in order to adopt procedural measures in the scope of its contributions;

VII - make any administrative infractions that violate consumers' diffuse, collective, or individual interests known to the appropriate authorities;

VIII - request the participation of federal government, state, municipal, and federal district agencies and entities, as well as oversee the price, supply, quantity and safety levels of goods and services;

IX - encourage, through financial resources and other special programs, the creation of consumer defense entities by the population and by public state and municipal agencies;

X – (Vetoed).

XI – (Vetoed).

XII – (Vetoed).

Sole paragraph. In order to achieve its objectives, the Consumer Protection and Defense Department may request assistance from scientifically and technically specialized agencies and entities. (In accordance to nomenclature given by Decree number 2181 of March 20, 1997).

## **TITLE V - Collective Convention about Consumption**

Art. 107. Civil consumer entities and associations of suppliers and unions of economic scope may regulate, through a written convention, consumer relations aimed at establishing conditions relative to price, quality, quantity, warranty, and the characteristics of products and services, as well as complaints and consumer conflict composition.

§ 1. The convention will be mandatory as of the moment the document is registered by an official notary's office.

§ 2. The convention will only be binding for those who are members of the signing entities.

§ 3. Any suppliers who disassociate themselves from the entity in update after the document has been registered will still be bound by the convention.

Art. 108. (Vetoed).

## TITLE VI - Final Considerations

Art. 109. (Vetoed).

Art. 110. Consider the following item IV added to article I of Law 7347 of June 24, 1985:  
"IV - to any other diffused or collective interest."

Art. 111. Item II of article 5 of Law no. 7347 of July 24, 1985 shall then read:

"II - include, among its institutional objectives, protection to the environment, consumer, goods that are artistic, aesthetic, historical or that have tourism or landscape value, or any other diffused or collective interest."

Art. 112. § 3 of article 5 of Law no. 7347 of June 24, 1985, shall now read:

"§ 3. In the case of an unjustified withdrawal from a lawsuit or lawsuit abandonment due to legitimate association, the public prosecution service or another legitimate entity will assume liability for the lawsuit."

Art. 113. Add the following §§ 4, 5, and 6 to article 5 of Law no. 7347 of July 24, 1985:

"§ 4. The requisite of pre-Constitution may be waived by the judge, when there is manifest social interest as evidenced by the dimension or characteristic of the damage, or by the relevance of the judicial interest to be protected.

§ 5. A partnership between government public prosecution services on Federal, State and Federal District levels will be allowed, in the defense of the interests and rights covered by this Law.

§ 6. Legitimate public agencies may require commitment from interested parties so as to adjust their conduct to legal requirements, through agreements that will be valid as extrajudicial executive titles."

Art. 114. Article 15 of Law no. 7347 of July 24, 1985 shall now read:

"Art. 15. If sixty days have passed since a judicial sentence has been issued and the authoring association still has not undertaken its execution, it will be executed by the Public Prosecution Service, or by any other legitimate agency."

Art. 115. Disregard the heading and article 17 of Law no. 7347 of July 24, 1985. The sole paragraph will now constitute the heading, with the following text:

"Art. 17. In case of bad faith lawsuits and damages"

Art. 116. The following text will now compose article 18 of Law on number 7347 of July 24, 1985:

"Art. 18. In all civil actions touched by this Law, there will be no advance payments, advantages, expertise and any other expenditures, nor condemnation of the authoring association, except when bad faith has been shown, in lawyer fees, and other lawsuit expenditures."



Art. 117. Add the following text to Law no. 7347 of July 24, 1985, and adjust the numbers accordingly:

"Art. 21. The items in Title III of the Law instituting the Code of consumer Defense will be applicable in the defense of diffused, collective, and individual interests."

Art. 118. This code will become valid 180 days after it is published.

Art. 119. Any contrary dispositions are withdrawn.

Brasilia, September 11, 1990; 169th year after independence in 102nd year after the proclamation of the Republic.

FERNANDO COLLOR

Bernardo Cabral

Zélia Cardoso de Mello

Ozires Silva