

Law 88/V/98

Of 31 December 1998

(Juridical regime for consumer protection and defense)

Under the terms of subparagraph b) of article 186 of the Constitution, by mandate of the people, the National Assembly decrees the following:

CHAPTER I
General provisions

Article 1
(Object)

This law approves the juridical regime for consumer protection and defense. It defines the functions of the State and the local governments, consumers' rights and the activities of the consumers' associations.

Article 2
(Definition)

Everyone who is furnished goods, provided service or conveyed any rights, whether for professional use or not, by a person who professionally exercises a profit seeking economic activity, is considered a consumer.

Article 3
(Ambit)

This law applies to goods, services and rights supplied and transmitted by any public or private entity, namely commercial firms, associations, groupings of enterprises, cooperatives, Public or Local Administration agencies, public collective persons, public enterprises or enterprises in which the State or local governments are majority stockholders, and public services concessionaires.

Article 4
(General protection functions of the State and local governments)

1. It is incumbent on the State and the local Governments to protect the consumer, specifically by supporting the creation and operation of consumers' associations, as well as by the execution of this law.
2. The general incumbency in protecting the consumer presupposes adequate legislative and regulamentary intervention in all the domains involved.

Article 5
(Function of training and education)

1. It is incumbent on the State to promote a consumers' education policy, by integrating matters pertaining to consumption and consumers' rights in school and in continuing education programs, specifically, using proper technological means in an information society.
2. It is incumbent on the State and the local governments to develop actions and adopt measures tending to educate the consumer, specifically by:
 - a) Introducing in the educational system, in particular at the basic and secondary levels, educational programs and activities on consumption;
 - b) Supporting initiatives promoted in this domain by the consumers' associations;
 - c) Promoting continuing education and training action in consumer awareness in general;
 - d) Promoting a national policy of training trainers and technicians specialized in the consumption area.
3. The educational programs disseminated through public radio and television services must integrate spaces destined to consumer education and training.
4. Telematic means must also be used in training the consumer, specifically through national and world information networks. Public sector and cooperative recourse to such means must be stimulated.

Article 6
(General information function)

1. It is incumbent on the State to develop actions and develop measures tending to inform the consumer in general, specifically by:
 - a) Supporting the training and information actions promoted by consumer associations;
 - b) Creating accessible databases and archives, on the national level, in the domain of consumption and consumer rights. The databases and archives should have free access and be used to disseminate general information.
2. The radio and television public services must reserve spaces, under the terms that the law shall define, to promote the interests and rights of the consumer.
3. Information to the consumer is provided in the Portuguese and the Cape Verdian languages.
4. The publicity must be licit, unequivocally identified and respect truth and the rights of the consumers.

5. The concrete and objective information contained in the publicity messages for a particular good, service or right are considered integrated in the contents of contracts that may be celebrated after their emission. The contractual clauses to the contrary are considered as not written.
6. It is incumbent on the local governments to adopt measures tending to inform the consumer in general, specifically by:
 - a) Integrating consumer information and training function in the competent municipal services;
 - b) Adopting follow-up, supervision and control mechanisms for consumer protection measures;
 - c) Creating municipal consumer information services;
 - d) Creating a municipal consumption council, with specific representation of economic and consumer interests associations.

CHAPTER II **(Consumer rights and suppliers duties)**

Article 7 **(Consumer rights)**

The consumer has the right to:

- a) Quality goods and services;
- b) Health and physical security protection;
- c) Training and education on consumption;
- d) Information on consumption;
- e) Protection of economic interests;
- f) Prevention and reparation for property and non-property damages that result from offences against [**«««««homogeneous, collective or diffused»»»»»**] individual interests or rights;
- g) Representative participation in the legal or administrative definition of their rights and interests;
- h) Judicial resolution of conflicts of which it is a part, by the swiftest process allowed in the general Law, including the cautionary providences;
- i) Exemption of judicial preparation costs in the cases in which it is a part;

- j) Prior information in court cases or interruption in the supply of goods and services effected by enterprises functioning under the exclusive and monopoly regime or that are a public services concessionaire.

Article 8
(Right to quality goods and services)

1. The consumption goods and services must be apt to satisfy the ends and the needs on which they are destined to produce the effect attributed to them, according to the legally established norms or, in the absence of such norms, in a manner adequate to the legitimate needs of the consumer.
2. Without prejudice to the establishment of more favorable deadlines by convention between the parts or by their uses, the supplier of non-consumable goods is obligated to guarantee their good operation for a period never less than a year.
3. The consumer has the right to a minimum guarantee of five years, for real properties;
4. The supplier of goods or service provider must inform potential consumers in clear, complete and adequate fashion, of health and security risks that may result from the normal use of dangerous goods and services they supply or provide.
5. When information is lacking or it is so insufficient, illegible and ambiguous that it compromises the adequate utilization of a good or service, the consumer has the right to rescind its acquisition contract within seven work days from the date the good is received or the service contract is signed.
6. The supplier of goods or the service provider who violates the duty to inform is responsible for the damages it causes the consumer, jointly with the responsible stakeholders in the production-to-distribution chain, that have violated the duty to inform.
7. The duty to inform cannot be denied or conditioned by invoking fabrication secrets not covered by law, nor can it be prejudicial to the juridical regime of the general contractual clauses nor against legislation more favorable to the consumer.

Article 12
(Duty to communicate by monopoly and exclusive enterprises)

1. The services and enterprises that operate under exclusive regime that supply goods or provide essential services to the consumers are obligated to inform of impending cuts in the supply of goods or interruptions in services provided.
2. The cuts in supply or services interruptions for non-payment of bills must be communicated to the consumer fifteen days prior to the date established for their execution.

Article 13
(Right to protection of economic interests)

1. The consumer has the right to protection of its economic interests. In the juridical relations pertaining to consumption, material equality, loyalty and good faith among the stakeholders takes precedence in the preliminaries, in the elaboration and during the term of the contract.
2. To prevent abuses resulting from pre-elaborated contracts, the supplier of goods and the service provider are obligated to:
 - a) Provide a clear and precise writing, in easily legible characters, of the general contractual clauses, including those inserted in singular contracts;
 - b) Non-inclusion of clauses in singular contracts that cause significant imbalances in detriment of the consumer.
3. Non-observance of the provisions of the preceding number is subject to the regime of the general contractual clauses.
4. The consumer is not obligated to pay for goods and services that he/she did not previously and expressly order or solicit, or that do not constitute compliance with an »»»»»»»»invalid«««««««««« contract. Likewise, the consumer is not responsible for the charges to be incurred in returning or to compensate for neither the product nor the responsibility for risks of damages or deterioration of the products.
5. The consumer has the right to be assisted after the sale, with emphasis in providing spare parts and accessories, for the normal average duration of the products supplied.
6. The supplier or service provider cannot link supplying a good or provide a service to the acquisition or provision of one or the other.

Article 14
(Right to reparation for damages)

1. Unless previously informed of or clarified before celebrating the contract, independently of the supplier's fault, the consumer that has been furnished a defective product has the right to demand its repair, to a reduction of price or to the resolution of the contract.
2. The consumer must report the defect within 30 days, in the case of a non real property, or one year in the case of a real property, after having identified the defect within the legal warranty period provided by law.

3. The rights conferred upon the consumer under number 1 are ended after any of the periods referred to in the preceding number if the consumer does not report them, or six months after the defect is reported. The repair time is not counted for this purpose.
4. Without prejudice to the provisions of the preceding numbers, the consumer has the right to indemnity for property damages resulting from defective goods supplied or services provided.
5. Independently of guilt, under the law, the producer is responsible for the damages caused by defects of the products it places in the market.

**Article 16
(Annulment)**

1. Without prejudice to the general contractual clauses regime, any contractual or convention provision that excludes or restricts the rights attributed by this law, is null.
2. The annulment referred to in the preceding number can be invoked only by the consumer or its representatives.
3. The consumer may opt to maintain the contract when some of its clauses are annulled under the terms of number 1.

**CHAPTER III
Institutes that promote consumer rights and their tutelage**

**Article 17
(Consumers associations)**

1. Consumer associations are endowed with juridical personality, they are non-profit, and their principal objective is to protect the rights and the interests of the consumers in general or of the consumers and their associates.
2. The ambit of the consumer associations may be national, regional or local, depending on the area they circumscribe their action to, and depending on whether they have at least 200, 100 or 50 associates, respectively.
3. The consumer associations may, further, be of generic or specific interests:
 - a) Generic interest consumer associations are those whose statutory purpose is the tutelage of the consumer rights in general;
 - b) Specific interest consumer associations are those whose interest is in specific goods or services.

**Article 18
(Rights of the consumer associations)**

1. Consumer associations have the following rights:

- a) The status of social partner in matters pertaining to policy on consumers, translated mainly in the recommendation of representatives to the consultation and concertation agencies that occupy themselves with such matters;
- b) The right to air time in radio and television, under the same terms as the associations with the social partner status;
- c) The right to represent the consumers in the public consultation and hearings to take place in decision making processes susceptible of affecting the rights of the consumers;
- d) The right to solicit, before the competent administrative and judicial authorities, the apprehension and removal of goods from the market or interdiction of services that are prejudicial to the rights of the consumers;
- e) The right to correct and to respond to the contents of publicity messages pertaining to goods and services placed in the market, as well as request from the competent authorities, the removal from the market of the deceptive and abusive publicity;
- f) The right to consult the files and other elements existing in the public services of the central and local administrations that contain data about the characteristics of consumption goods and services and divulge the necessary information to the consumer interest tutelage;
- g) Right to be informed on goods and services price setting elements and conditions, whenever solicited;
- h) The right to participate in price regulation for the supply of goods and to provide essential services, namely in the domain of water, energy, gas, transportation and telecommunications, and to solicit or clarify the tariffs practiced or the quality of services, so that they may provide their recommendations;
- i) The right to request analyses from the official laboratories on the composition or the state of conservation and additional composition of goods destined for public consumption and to publicize the corresponding results. The service must be provided with the necessary urgency at a tariff that does not exceed the cost;
- j) The right to the presumption of good faith for the information it renders;
- k) The right to popular action under the terms of the law;

- l) The right to complaint and to denounce, and the right to organize as assistants in penal cases and to accompany the contra-ordination processes, when they so require, presenting memorials, technical opinions, suggestions or exams and other diligences of proof, until the process is ready for a final decision;
 - m) The right to exemption in the payment of costs, preparation and stamp tax, under the terms of the law;
 - n) The right to receive support from the State, through the central and local administration to prosecute its ends, namely the exercise of its activity in the domain of consumer training and representation;
 - o) The right to fiscal benefits identical to those awarded or to be awarded to public utility institutions.
2. The rights foreseen in subparagraphs a) and b) of the preceding are conferred exclusively to generic consumer associations on the national level;
3. The rights foreseen in subparagraph h) of nº 1 are conferred to associations of specific interest when the interest is specifically related to the good or service that is the object of the price regulation and of a non-local service, exclusively conferred to associations on the national level.

Article 19
(Good conduct accords)

1. The consumer associations may negotiate good conduct accords with professionals or their representative organizations. The accords should govern the relationship between the two.
2. The accords referred to in the preceding number cannot be contrary to the imperative precepts in the law, specifically the law of competition. Neither can it contain provisions that are less favorable to the consumers than those legally established.
3. Good conduct accords of generic interest, celebrated with consumers associations obligate the professionals or those represented before the consumers, whether or not they are members of the intervening association.
4. The accords referred above must be divulged, namely by posting them in commercial establishments, without prejudice to the use of other more appropriate information means.

Article 20
(Public Ministry)

It is incumbent on the Public Ministry to defend the consumers in the ambit of this law and in the framework of the respective competences, by intervening in

administrative and civil actions affecting the tutelage of the homogeneous individual interests, as well as the collective diffused interests of the consumers.

Article 21
(National Council on consumption)

1. The Government shall provide for the creation of the National Council on Consumption as a consultation, pedagogic and preventive action entity, exercising its function in all matters related to the interests of the consumer and of coordination and execution of the measures tending to the protection, information and support to consumers and their organizations.
2. Following are the functions of Council, namely:
 - a) Make recommendations on all matters related to consumption that the Government, the consumer associations or other entities represented in it submit for evaluation;
 - b) Emit prior recommendation on relevant legislative initiatives in matters of consumption;
 - c) Study and propose to the Government the definition on the great lines of the policies and sectoral general strategy action in the area of consumption;
 - d) Approve recommendations to public and private entities or the consumers on themes, actions or situations of interest to the tutelage of the rights of the consumer;
 - e) Solicit and obtain from the entities that supply goods or provide services, by fundamented requests, the information and elements necessary to safeguard the rights and the interests of the consumers, and execute the diligences necessary to obtain such information and elements.
 - f) Request from the competent authorities the cautionary measures for the cessation, suspension, or interdiction to the supply of goods and provision of services that, independently of a real loss, by its objective, form or purpose, imply or may imply risks to health, security and the economic interests of the consumers.
3. It is incumbent on the Government, through a proper diploma, to regulament the operation, composition and appointment of the members of the National Council on Consumption. In any case, the consumers should be assured a representation in the Council not smaller that 50% of the total number of members.

CHAPTER V
Final dispositions

Article 23
(Regulamentation deadline)

The Government shall regulament this law within 120 days after its publication.

Article 24
(Effective date)

This law goes into effect 120 days after its publication.

Approved on 16 December 1998

The President of the National Assembly, *António Espírito Santo Fonseca*

Promulgated on 28 December 1998

Publish it.

The President of the Republic, ANTÓNIO MANUEL MASCARENHAS GOMES
MONTEIRO

Signed on 29 December 1998

The President of the National Assembly, *António Espírito Santo Fonseca*