

**MCV ALERT**  
**August 31, 2009**

**PROPOSED PUERTO RICO CONSUMERS' CODE BILL FILED**

A bill to enact the Puerto Rico Consumers' Code was introduced on August 14<sup>th</sup> by Senator Lorna Soto, Chairwoman of the Senate Banking and Consumer Affairs Committee. The legislation intends to recognize the rights of consumers as “fundamental human rights” and to establish the general rules that will govern the agreements between consumers and merchants or services providers.

**A. Consumers' rights**

The bill states that the following, are considered consumers' “basic rights”: freedom of choice of products and services; truthful, sufficient, and clear information about products and services; fair and non-discriminatory or abusive treatment from merchants or services providers; protection against false or misleading advertising; protection of the consumers' life, physical integrity, health, and safety; prevention and repair of any damage suffered by consumers; access to judicial and administrative forums; and right of handicapped consumers to be provided with information regarding lower cost alternatives for the goods or services available to assist them.

The bill also provides that all information provided or made available to consumers related to goods or services' characteristics must be trustful, detailed, sufficient, and clear, and that merchants have a duty to provide consumers with the purchased product's or service's invoice and warranty copy. In any transaction involving financing: the total cost, including balance payout cost, interests, charges, taxes, or discounts, must be provided to the consumer, in addition to any other requirement stated in other applicable laws or regulations.

The bill further provides that no good or service may be sold or rendered at a price higher than the advertised price. Phrases such as “guaranteed” or “warranty” can only be used when they are clearly explained, including any requirement, condition, cost, term, and place where they can be made effective.

All manufacturers, producers, importers, distributors, and retailers, except for just cause, are required under the bill to ensure the adequate availability of components, spare parts, and technical services while the goods are produced, manufactured, imported or distributed, and afterwards during a reasonable term in proportion to the goods' durability.

The bill prohibits the refusal to sell to a consumer any good in stock that is available to be purchased in a commercial establishment. If a product is exhibited in the store's window it will be considered as "available". Any form of discrimination in the selling of goods or services is prohibited. The only allowable reasons to deny the purchase of goods or services would be their unavailability or any legal or regulatory requirement that does not allow the merchant to sell a product to a consumer.

The bill also would require that the advertising of any special sale or promotions must state the term of such sale or promotion, the general conditions for the transactions, and, when applicable, the amount of goods available in inventory. If no term is mentioned in an advertisement, it will be considered that the sale or promotion will last 30 days after the last advertisement was released.

### **B. Contracts**

According to the bill, all terms and conditions, and their explanations, must be written in a clear and understandable way and in characters not smaller than 10 points. Any language written in characters smaller than 10 points in an adhesion contract would be voidable at the consumers' choice. All clauses would be required to be drafted with good faith and with a fair balance between the parties' rights and obligations, always excluding "abusive" clauses. Any information published in advertisements of products or services would be considered as included in the contract with the consumer. A list of items that would be regarded as "abusive" when stated in a contract is included in the bill, including, among others, one-sided clauses with regards to warranties, releases, right to resolve contracts, right to interpret contracts, changes in the product or service's characteristics, hidden defects, law or adjudicative forum of choice other than the consumers' domicile or where the obligation takes place, and any clause that limits the jurisdiction of the Puerto Rico Consumer Affairs Department or any other agency with jurisdiction to oversee the transaction.

### **C. Credit operations**

The bill provides that when a transaction involving products or services includes the granting of credit to a consumer, it would be the merchant's duty to disclose in plain language the rights and obligation of each party to the credit contract. Consumers would always have the right to pre-pay the pending balance of a transaction. Any collection procedure against a consumer would have to be reasonable. No humiliating, threatening, or coercive proceedings would be allowed.

### **D. Merchants' responsibilities**

Consumers would have the right to demand the contract's cancellation or fulfillment and to demand compensatory damages when merchants disregard their obligation to act in

good faith or when they breach their duty to keep informed consumers during the early, perfection, and execution stages of the contract.

1. Distribution chain

According to the bill, all participants of a product's distribution chain (manufacturers, importers, distributors, producers, and retailers) would be responsible for the damages caused by the sold goods or services, according to any applicable torts laws and the Puerto Rico Civil Code.

2. Hidden defects

In addition to applicable compensatory damages, in the case of hidden defects that make a product unsuitable for the purposes for which it was bought or that decreases the product's quality, consumers could choose to demand the contracts' cancellation or a price discount. When purchased goods never work properly, consumers have the right to request full reimbursement.

3. Products' standards

Under the bill, consumers have the right to request a free of charge repair of the purchased goods when the products do not comply with mandatory standards or their components are different from the products' specifications, or if during the products' warranty term a quality deficiency becomes evident, as long as the product has been used under normal or expected circumstances. Also, a free of charge repair could be requested if the consumer agreed with the merchant that the purchased goods must have had specifications that were not fulfilled.

The bill contains numerous other provisions regarding product liability and specifies the procedures for products purchasers to enforce their rights under the proposed legislation.

If you wish to know more about this bill, please contact:

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