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"PRO CONSUMER" BILL THAT AMENDS THE CONSUMER PROTECTION ACT MOVES FORWARD, AFTER BEING APPROVED BY THE CHAMBER OF DEPUTIES

On January 24th, 2019, the Executive Power submitted to Congress a bill of law that establishes measures to encourage the protection of consumers' rights -Bulletin No. 12,409-03- (hereinafter, the "Bill"). The Bill is known as the "Pro-Consumer Bill", since it amends Law No. 19,496 Consumer Protection Act ("CPA"), seeking to reinforce the rights of consumers and incorporate new obligations for suppliers.

After resolving the divergences formulated by the Joint Commission regarding the intended article 15 bis of the LPDC (on data protection matters), on June 30, 2021, the Bill was unanimously approved by the Chamber of Deputies, being sent to the Senate, for its approval.

The following is a summary of the main guidelines of the Bill and the most important modifications to the current regulations:

"Pro Consumer" principle

The Bill seeks to incorporate the new article 2 ter to ensure that the rules contained in the CPA are always interpreted in favor of consumers, in accordance with the pro-consumer principle.

Enactment of new basic consumer rights

The Bill incorporates a letter g) and h) to Article 3, setting forth the basic rights of consumers, in particular:

• The right to always resort to the competent court in accordance with the CPA. The supplier must inform the consumer of this right when entering into the contract and at the time of any dispute, complaint or claim. Likewise, once the dispute has arisen, it may be submitted to mediation, conciliation or arbitration, which will in any case be free of charge for the consumer (details in point III below).
• The other rights established in the laws related to consumer rights,

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especially those set forth in Law No. 18,010, which establishes rules for credit operations and other money obligations. For such operations, the prepayment fee and commission will be applicable, regardless of the amount of the balance owed, thus eliminating the 5,000 UF limit currently contained in Law No. 18,010 with respect to consumer financial operations.

Incorporation of alternative dispute resolution methods to which suppliers may subscribe (mediation, conciliation or arbitration)

The Bill incorporates the possibility that the parties, once their conflict has arisen, may submit it to mediation, conciliation or arbitration. For this purpose, suppliers must inform the nature of each of the mechanisms offered, which will be free of charge and will only be initiated by the express will of the consumer, which must be in writing.

Financial and non-financial suppliers will be able to freely subscribe and offer the electronic Dispute Resolution System within the framework of the Sernac Seal rules.

New rights in the area of electronic or distance commerce

The Bill proposes to incorporate the following amendments in the area of electronic commerce:

• It establishes the duty of all suppliers to inform, prior to purchase, the cost and time it will take to ship their products, constituting "basic commercial information".
• The right of withdrawal or repentance, within 10 days from the receipt of the product, without expression of cause, with respect to the generality of the purchases of goods, without conditioning the right to the will of the supplier (except in the case of the contracting of services, where the supplier will maintain the possibility of excluding the right of withdrawal, having to inform it unequivocally, accessible and prior to the execution of the contract and its respective payment, where the supplier shall maintain the possibility of excluding the right of withdrawal, having to inform it in an unequivocal, accessible and prior to the signing of the contract and its respective payment, or in the case of goods that by their nature cannot be returned, may deteriorate quickly, have been custom-made or are for personal use).
• A new hypothesis of application of the right of withdrawal is

established, including also face-to-face purchases in which the consumer has not had direct access to the good.

Personal Data

The Project intends to incorporate a new Article 15 bis regarding personal data, with the purpose of establishing that:

• In the case of personal data, within the framework of consumer relations, the following Articles are applicable: (i) 2 bis letter b) of theCP, which allows initiating actions in protection of the collective or diffuse interest of consumers and requesting indemnities in their favor; (ii) 58 of the CPA, which allows SERNAC to exercise functions in protection of consumers' rights (such as those supervisory, interpretative, propositive, initiation of collective voluntary procedures, formulation of information requirements), and; (iii) 58 bis of the CPA, which requires sectorial supervisory agencies with sanctioning powers to send SERNAC a copy of the resolutions imposing sanctions.
• However, the aforementioned powers shall not be applicable in the event that they fall within the legal competencies of another body.

Legal Warranty

• The Bill introduces amendments in the area of legal guarantee of goods, in particular:
• The term is extended from 3 to 6 months.
• It establishes the non-waivable right of the consumer to choose, at his discretion, between the free repair of the good or, after restitution, its replacement or refund of the amount paid, without prejudice to compensation for damage caused, which must be communicated by the supplier in each of its premises, stores, websites or others.
• It is established that in order to exercise any of the rights granted by the legal guarantee it is not necessary to exhaust the voluntary warranties granted by the supplier. Likewise, the exercise of any of the warranty will suspend the term of the guarantee policy granted by the supplier.
• The supplier is prevented from offering consumers the contracting of products, services or policies whose coverage corresponds to obligations that the supplier must assume in accordance with the law.

Higher education, vocational and technical education institutions

The Bill introduces a new Article 3 quater in order to establish the duty of higher education institutions, professional and technical education institutions, to grant free of charge the certificates of studies, grades, debt status or other similar, at the request of the student, former student or those who have suspended their studies or are in arrears in the respective educational institution.

Such certificates may be requested up to two times in one year by the student and must be issued within ten working days from the presentation of the respective request.

Adhesion contracts, abusive clauses and termination of contracts

In the case of adhesion contracts, the Draft establishes:

• The abusive nature of those clauses that limit the means through which consumers may exercise their rights, in accordance with the law.
• That ambiguous clauses in adhesion contracts shall be interpreted in favor of the consumer.
• That in the case of contradictory clauses, the clause or part of the clause that is more favorable to the consumer shall prevail.
• The duty to inform, when entering into the contract, the mechanisms and conditions for the consumer to terminate the contract. For this purpose, suppliers may not condition the termination of the contract to the payment of amounts owed or restitution of goods (without prejudice to the payment of the corresponding prepayment commission, in the case of financial products or services) and, in no case establish more burdensome conditions than those required for its conclusion. Any agreement to the contrary shall be deemed not to be in writing.

New obligations for motor vehicle suppliers

Regarding motor vehicles, the Bill incorporates the new Article 12 C in the CPA in order to:

• Establish the duty of every supplier of motor vehicles to inform the consumer, in a clear and unequivocal manner, prior to the execution of the purchase contract or lease-purchase contract, those mandatory requirements justified to maintain in force the vehicle's voluntary warranty.

• In the event of mandatory maintenance, the list of all these must be informed, including their estimated values, as well as the authorized technical service establishments that perform them. The freedom of choice of the technical service may only be limited with respect to maintenance that is not related to the voluntary warranty, when the specific technical characteristics justify being carried out by expressly authorized workshops or establishments.
• Establish the duty of every supplier of motor vehicles to provide the consumer with another vehicle of similar characteristics for the duration of the repair, when the use of the legal or voluntary warranty entails depriving the consumer of the use of the vehicle for a term exceeding five working days.

New obligations for financial suppliers

In financial matters, the Bill incorporates obligations and prohibitions for suppliers, in particular:

• The duty of the financial supplier, prior to a money credit operation, to analyze the economic solvency of the consumer in order to be able to comply with the obligations arising therefrom, based on sufficient information obtained through official means for such purpose, and must inform the consumer of the result of such analysis. Likewise, the supplier must provide the consumer with specific information on the transaction in question.
• It is forbidden in higher education institutions to offer money credit operation contracts that are not related to the financing of contracts for the provision of educational services.
• It establishes the right of the consumer to request, without expression of cause, the permanent blocking of payment cards, without the supplier being able to charge the costs of administration, operation and/or maintenance during said period.

Air transport contract

The Bill intends to amend the Aeronautical Code, establishing new obligations for air transport providers. In particular, it establishes:

• The duty of the supplier to inform passengers of their rights in accordance with the conditions established by the Civil Aeronautics Board, after consultation with the National Consumer Service, without prejudice to the obligation of the carrier to make available to the public information brochures specifying their rights, both in sales

offices and at airport counters.
• The duty of the carrier to inform the passenger of any change in the itinerary, due to an advance, delay or cancellation of the flight, by means of written communication by the most expeditious means possible, to the contact previously requested to the consumer, indicating the reason for the change.
• The duty of the carrier, in case a trip does not take place -whether due to causes attributable to the carrier, the passenger or for reasons of security or supervening force majeure-, to reimburse the taxes, charges or aeronautical rights paid by the passenger, with or without the passenger's request, within ten days, through the same means used to pay the ticket, or the one indicated by the consumer after having been consulted by the carrier when such information is not available. In case of unjustified delays, the refund shall be increased by 50% in favor of the passenger for every thirty days. After the first thirty days without obtaining the refund, the consumer may demand it from the authorized agent who made the sale, without prejudice to the agent's claim against the carrier.
• The right of the passenger to change the date scheduled for a trip, paying the difference of the ticket or to request the refund of the amount paid, if he proves through a medical certificate, that he is unable to travel. In case of requesting a new date, it may be set within a period of up to one year from the originally scheduled date.

New Regulations of the Ministry of Economy, Development and Tourism

The Bill also contemplates the drafting of three new implementing regulations by the Ministry of Economy, Development and Tourism:

(i) A regulation regulating the application of dispute resolution mechanisms that may be offered by the supplier to consumers;

(ii) A regulation referring to the form and conditions in which the supplier must communicate the exclusion of the right of withdrawal, and the goods in which such exclusion is exceptionally applicable;

(iii) A regulation that will determine the form and conditions to be observed in order to comply with the obligations introduced in the area of financial products and services in the new article 17 N, regarding the analysis of the economic solvency of the consumer and its timely communication.

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