

June, 2014

› BILL OF LAW FOR THE MODIFICATION OF LAW N° 19.496 ON THE PROTECTION OF THE RIGHTS OF CONSUMERS

On June 2nd, 2014, President Michelle Bachelet entered a bill into Congress which seeks to modify Law N° 19.496 on the Protection of the Rights of Consumers ("CPA").

The message of the bill recognizes that the tools provided by the current legislation to address violations to the rights of consumers are not sufficiently efficient or dissuasive: in several cases it is less expensive for providers to pay a fine for breach of the CPA, than to comply with such regulation.

The following is a summary of the main modifications proposed by the bill:

1 **Reinforcement of SERNAC**

The National Consumer Service – SERNAC (for its acronym in Spanish) currently has an active role only with regard to education, training, informative campaigns, observatories, supervision and actions in favor of consumers. However, this agency does not have sanctioning powers, and its judicial actions must be channeled through the Local Courthouses. The bill seeks to significantly elevate the power attributed to SERNAC, providing it with powers to enter into a provider's establishments aided by the police, to impose fines in an administrative process, dictate rules of general application, regulate collective mediations, and administratively interpret the CPA.

2 **SERNAC as an oversight and sanctioning authority**

The current drafting of the CPA provides that conflicts between consumers and providers must be solved by local courthouses (except for class actions, which are filed before ordinary Civil Courts). The bill pursues to suppress the ability of local courthouses to solve matters related to infractions of the CPA and to determine the imposition of the corresponding fines, awarding such power directly to SERNAC. The discussion regarding the amount of the damages will be left to the decision of ordinary Civil Courts.

3 **Increase of sanctions**

Currently, fines associated with breach of the CPA, in general, correspond to an amount of up to approximately USD\$3,800. However there are some specific infractions (i.e. misleading advertisement, breach of the SERNAC Financiero regulations, etc.) which entail a fine of up to approximately USD\$57,100. According to the bill, sanctions for the violations of the provisions of the CPA are considerably increased. The general sanction is elevated to six times its current value, reaching a maximum of app. USD\$22,800, and the sanction for misleading advertisement is increased up to app. USD\$76,200 (and app. USD\$228,600 in case of recurrence). Moreover, the sanction for breach of the SERNAC Financiero regulations is elevated to up to app. USD\$114,300



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4 *Consumers associations*
Consumers associations are independent non-profit organizations. The bill seeks to provide more powers to these types of organizations, allowing, among other measures, for consumers associations to obtain profit for their activity.

5 *Statute of limitations of the action for breach of the CPA*
The statute of limitations for filing a judicial action for breach of the CPA is increased by the bill from 6 months from the date of the breach, to 2 years from cease of such.