

M. TOBACCO AND TOBACCO PRODUCTS

M1 The Consumer Protection Act

Unofficial translation

Passed on December 15, 1993

(Riigi Teataja Part I 1994, No.2.Art.13)

entered into force January 1, 1994; paragraphs 2 and 3 of Section 6 - July 1, 1994

Chapter I

GENERAL PROVISIONS

Section 1. Task of the Law

- (1) The task of the present Law is to guarantee the protection of the rights of the consumer in Estonia.
- (2) To matters not regulated by this Law other legal acts shall be applied.

Section 2. Object of the Law

- (1) This Law determines the consumer's rights in purchasing and making use of goods or services, as well as the liabilities of the vendor, manufacturer and mediator in guaranteeing the consumer's rights and the responsibility for the infringement of these rights, and the organization of the protection of a consumer.
- (2) In the sale and purchase of bank and insurance services and immovable property the relations between the consumer and the vendor are regulated by this Law in so far as they are not regulated by other laws.

Section 3. Definition

For the purposes of the present Law terms shall have the following meaning:

- (1) Consumer - a natural person who purchases and uses or intends to purchase and use a commodity or service for personal needs;
- (2) Vendor - a natural or legal person who immediately sells or offers a commodity or service to a consumer;
- (3) Warranty - the vendor's liability to remove defects of the goods or services at his own expense, to deliver substitute goods or compensate for the cost of goods or services and the cost of the goods or services and additional expenses;
- (4) Unconditional requirement - a requirement concerning safety, purposefulness, compatibility, exchangeability, warranty, realization term, marking, package, certification of goods or services, information in the Estonian language etc., enacted by a legal act, for unconditional fulfilment.

Section 4. Basic Rights of Consumer

The basic rights of a consumer are to:

- (1) Demand goods or services which satisfy at least the unconditional requirements;
- (2) Be protected from goods or services that might endanger his life, health, property and environment, as well as from goods or services the use or possession of which is prohibited;
- (3) Obtain necessary and authentic information for making a conscious choice from among the goods and services supplied;
- (4) Seek for the consideration of his interests and to be represented through the unions and societies of consumers in taking decisions in matters concerning consumer policy;
- (5) Require state protection in the event of his rights being abridged;
- (6) Claim for compensation for material and moral damage caused by the vendor.

Section 5. Contracts

- (1) A contract between a consumer and a vendor, at the conclusion of which the consumer is not immediately present, including the contract of sales by post or on instalment plan, or that of prolonged service or of service performed for periodical payments, shall be drawn up in the written form.
- (2) Any provision of the contract concluded between a consumer and a vendor, which decreases the responsibility of the parties, or enacts preference for the vendor or restrictions for the consumer, as compared to the provisions of the law, shall be void.
- (3) An inaccurate or incomplete term of a contract concluded between a consumer and a vendor shall be interpreted to the advantage of the consumer.

(4) Either the consumer or the vendor may declare the contract avoided in cases and in the order foreseen by the law.

Chapter II

SAFEGUARDING OF CONSUMER'S RIGHTS

Section 6. Requirements to Goods and Services

(1) None of goods or services may, if used purposefully, endanger the consumer's life, health and property, as well as environment; the goods and services must have customary consumption qualities and must satisfy all other unconditional requirements.

(2) Any goods and services sold to the consumer must carry information in the Estonian language, including a marking or operating instructions in conformity with unconditional requirements.

(3) Technically intricate or potentially dangerous goods or services or those demanding special operating skills, must, in addition to the information required in paragraph 2 of this Section, be supplied with corresponding cautions in the Estonian language, and basic specifications of the consumption qualities and components, as well as with international or generally known conventional signs.

(4) Any used goods or defective goods or services may be sold in the established order, provided that the consumer has been informed of the respective qualities of the goods or services and that the goods and services do not endanger consumer's life, health, property or the environment. By way of exception dangerous goods may be sold, for being processed or liquidated, to a legal person who has a corresponding licence.

Section 7. Vendor's Obligations

When offering and selling goods or services to the consumer the vendor must observe general good manners and customs of trade and shall be obligated to:

(1) Guarantee the conformity of the goods and services with the requirements of Section 6 of the present Law;

(2) Render necessary and true information in the Estonian language on the qualities, price, origin, conditions of use, etc. of the goods or service being offered;

(3) Observe trade, service, health protection and other unconditional regulations and requirements;

(4) Keep to legally established or co-ordinate prices and exceed the transaction prices or announced prices;

(5) Guarantee the conformity of the goods and services with samples or models selected by the consumer, or with the contract concerning the goods or services concluded with the consumer;

(6) Keep to the contractual terms and other stipulations;

(7) Guarantee correct settling of accounts and accurate measuring;

(8) Retain the guarantees given by the manufacturer if these are not less than the legally established ones; otherwise provide warranties in the order prescribed by the civil code;

(9) In the event of selling goods or services under warranty, hand over a document carrying the date of selling, or, in the event of selling other goods or services, issue a relevant document at the consumer's request;

(10) Carry bulky or heavy warranted goods to be returned, exchanged or repaired to the place of destination and back to the consumer at his own expense, or compensate the corresponding expenses to the consumer;

(11) Provide the consumer with a calculation of the service at his request;

(12) Use such markings as to clearly identified by the consumer as a legal and/or natural person;

(13) Keep the shipping and sales documents (in case of non-provisions also the quality certificates) at the place of sale, and produce them at the request of a competent inspecting officer;

(14) Inform, without delay, a competent office of supervision or, if it is impossible, mass media upon obtaining the knowledge about goods or services, which, if used expediently, may endanger the health, life or property of a consumer or the environment;

(15) Compensate for material or moral damage caused to the consumer.

Section 8. Prohibitions and Restrictions

(1) The vendor shall be prohibited to:

1. Beset the consumer's rights provided by the present Law;

2. Limit or foster unlawfully the sale of goods or services, influence the consumer by misleading advertising or disparaging the goods or services of other vendors, by incorrect use of the designation of a firm, trademark or other attributes, or in other ways, at discord with the general manners and customs of trade;

3. Sell packaged goods without marking;

4. Sell goods the realization date of which marked by the manufacturer has expired.

(2) The prohibitions and restrictions concerning the advertising, sale or manufacture of tobacco products, spirituous liquors, weapons, ammunition, narcotics, medicines and other goods and services, which are or may be detrimental to the consumer, shall be enacted by separate laws.

(3) Goods, the use or possession of which is restricted by a foreign treaty ratified by the State Assembly, or a legal act valid in Estonia, may be advertised, sold, consigned or manufactured only in the order established by the Government of the Republic.

Chapter III

ARRANGEMENT OF PROTECTION OF CONSUMERS

Section 9. Societies and Unions of Consumers

(1) To protect their interests the consumers are entitled to assemble in consumers societies, the order of the foundation and activities of which has been established by the law regulating the management of non-profit associations of natural persons. Consumers societies may establish unions and central federations of consumers.

(2) The authorized representatives of the societies and unions of consumers shall have the right to:

1. Exercise control, either together with a competent official or independently, over the discharge of the obligations of the vendor, including price formation;

2. Make out a record concerning the discovered infringement and to submit it the official of protection of consumers or a competent institution;

(3) Represent consumers in the relations with vendors, in the Board of Protection of Consumers, in court or other institutions.

Section 10. Activities of Parish and Town Councils Concerning the Protection of Consumers

(1) The parish and town councils are entitled to establish units engaged in protection of consumers.

(2) The parish or town councils may authorize officials to be engaged in protection of consumers, who will be entitled to:

1. Exercise control over the implementation of the present Law;

2. Give oral warning or precepts as provided in Section 15 of the present Law;

3. Apply administrative responsibility in accordance with the Administrative Law or make proposals for prosecuting the infringer of the law.

Section 11. State Protection of Consumers

(1) The state protection of consumers shall be organized by the Government of the Republic through the State Board of Protection of Consumers and other competent authorities of state supervision. The state authorities of supervision which have equal rights and obligations as the State Board of Protection of Consumers shall be appointed by the Government of the Republic.

(2) To guarantee the rights of the consumers provided by the present Law the Government of the Republic shall establish trade, service and health protection and other regulations concerning the consumers' interests. Other unconditional requirements shall be established in the order prescribed by the Government of the Republic.

Section 12. Obligations of State Board of Protection of Consumers

(1) The State Board of Protection of Consumers shall be entitled to:

1. Make proposals for the adoption of and amendments to the legal acts concerning the protection of consumers;

2. Exercise control over the implementation of the present Law;

3. Consider the reports and complaints submitted to the Board concerning the violation of consumers' rights, defend the rights and interests of the consumers in court;

4. Give oral warnings or precepts as provided in Section 15 of the present Law;

5. Apply administrative responsibility and claim for prosecution of a natural person for the violation of the Law on Protection of Consumers;

6. Seal dangerous goods or goods without shipping or sales documents and claim forfeiture of such goods;

7. Insist upon removal of the business licence of an enterprise or organization as provided by the law;

8. Make public the information on the infringing activities of the vendors and persons rendering services;

9. Exact relevant documents, materials and other necessary information from natural and legal persons;

10. Allow the representatives of consumers' society to take part in solving the problems concerning the protection of the consumers;

11. Instruct the consumers and the societies of consumers in the matters of protection of consumers.

(2) The officials of the State Board of Protection of Consumers shall be entitled to enter freely the vendor's office, building and vehicle transporting the goods or to open the means of transportation.

(3) The rights enumerated in items 1,2,3, 10 and 11 the first paragraph of the present Section shall at the same time be the obligations of the State Board of Protection of Consumers.

If the State Board of Protection of Consumers has obtained information about goods or services which, if used expediently, may endanger the consumer's health, life or property or the environment, it shall have the obligation to take all possible measures dependent on it prevent the sale of such goods or services, informing at need the mass media.

Section 13. Pledge of Secrecy

The competent officials of protection of consumers and the representatives of the societies and unions of consumers shall have the obligation to withhold the business secrets obtained by them in the course of performance of the duties related to the protection of consumers.

Section 14. Consumer's Right to Claim Protection

The consumer shall be entitled, either immediately or through a society of consumers, to apply to a town or parish administration, State Board of Protection of Consumers or to the court and participate in the consideration of his application on complaint.

An application or complaint submitted by a consumer shall be settled within a month at the latest, unless provided otherwise by the law.

Chapter IV

RESPONSIBILITY FOR INFRINGEMENT OF LAW ON PROTECTION OF CONSUMERS

Section 15. Precepts

(1) The official of the State Board of Protection of Consumers shall be entitled to give the vendor, manufacturer or mediator the following obligatory precepts:

1. To cease the infringement of the law and reconstitute the initial condition;
2. To intermit the sales of goods or services for the lack of conformity with the unconditional requirements or the absence of shipping or sales documents;
3. To apologize publicly to the consumer.

(2) The rights specified in points 1 and 2 of paragraph 1 of present Section shall be extended to officials of the police, health protection and environment protection in case vendors, manufacturers or mediators of goods which endanger people's health or are prohibited for use, are to be called to order.

Section 16. Responsibility of Natural Person

For violation of the present Law any natural person shall bear disciplinary, administrative, civil or criminal responsibility as provided by the law.

Section 17. Responsibility of Legal Person

(1) A legal person may be amerced in the following way:

1. For producing, consigning or selling goods or services which endanger the consumer's health, life or property or the environment, violating thereby the corresponding legal acts - with a fine in the amount of double value of the goods which have been the immediate object of the violation of the law, but not less than 3000.-EEK;
2. For not keeping the shipping and sales documents of goods or services in the place of sale, or for not producing them to a competent person exercising control - with a fine in the amount of 1000.-EEK;
3. For the violation of this Law not specified in points 1 and 2 - with a fine in the amount from 100 to 3000.-EEK.

(2) In the event of violations specified in point 1 of the first paragraph forfeiture of the goods which have been the immediate object of the violation shall be applied (except for the goods to be processed, re-marked, under-priced, etc.)

Section 18. Proceeding in Case of Violations by Legal Persons

(1) The right to apply penalties to the legal persons rests with the general director of the State Board of Protection of Consumers or any other competent institution of supervision, or with his deputy, and persons authorized by the foregoing. A case of violation resulting in forfeiture shall be discussed by an administrative judge.

(2) The case of violation of the law by legal person shall be treated by following the procedure prescribed in the Code of Violation of Administrative Law.

(3) In case the person who has violated the law is an official and, at the same time, a legal person, he shall be held liable either on the bases of the Code of Violation of Administrative Law or on the present Law.

(4) While inflicting penalties, the seriousness and nature of the violation, the person of the violator, the degree of his guilt, aggravating or lightening circumstances, and the property status shall be taken into consideration.

Section 19. Accrual of Fines

Fines imposed on the legal persons for violating the Law on Protection of Consumers shall accrue into the budget of the local self-government of the place of violation to the extent of 60 per cent, and into the state budget to the extent of 40 per cent.

Section 20. Compensation for Losses

(1) The vendor shall compensate to the consumer for losses due to the breach of the vendor's obligations enacted in the present Law.

(2) The manufacturer or mediator shall compensate the damage caused by him to the vendor, which the latter suffered while performing his obligations to the consumer.

(3) Any damage suffered due to the incorrect decision of the State Board of Protection of Consumers shall be compensated by the state.

Chapter V

APPLICABLE PROVISIONS

Section 21. Officials Authorized to Discuss Cases of Violation of Present Law

Until the formation of the State Board of Protection of Consumers and the appointment by the Government of the Republic of institutions of supervision with equal rights and obligations, the right of application of administrative responsibility for violation of the present Law shall rest with the officials enumerated in Articles 189, 203, 205 - 207 and 209 of the Code of Violation of Administrative Law.

Section 22. Foundation of Consumers' Societies

Until the enforcement of the law on regulations of non-profit societies of natural persons the societies of consumers shall be founded and the activities performed according to the Estonian SSR Law on Associations of Citizens.

Section 23. Entry into Force

The present Law shall enter into force on January 1, 1994 except the provisions of paragraphs 2 and 3 of Section 6, which shall enter into force on July 1, 1994.

M2 The Regulation of the Government of Estonia No. 327 of October 26, 1999

Tubaka ja tubakatoodete sisse- ja väljaveo, tootmise ning müügi eeskirja kinnitamine
Vabariigi Valitsuse 26. oktoobri 1999. a määrus nr 327

Tarbijakaitseseaduse (RT I 1994, 2, 13; 1999, 35, 450) paragrahvi 11 lõike 3 alusel ja kooskõlas äriseadustiku (RT I 1995, 26-28, 355; 1998, 91-93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596) paragrahvi 521 lõikega 1 Vabariigi Valitsus määrab:

Kinnitada «Tubaka ja tubakatoodete sisse- ja väljaveo, tootmise ning müügi eeskiri» (juurde lisatud).

Peaminister Mart LAAR
Majandusminister Mihkel PÄRNOJA
Riigisekretär Aino LEPIK von WIREN

Kinnitatud Vabariigi Valitsuse 26. oktoobri 1999. a määrusega nr 327

TUBAKA JA TUBAKATOODETE SISSE- JA VÄLJAVEO, TOOTMISE MÜÜGI EESKIRI

I. ÜLDSÄTTED

1. Tubaka ja tubakatoodete sisse- ja väljaveo, tootmine ning hulgi- ja jaemüük peab toimuma kooskõlas käesoleva eeskirjaga. Käesolevas eeskirjas reguleerimata küsimustes tuleb tubaka ja tubakatoodete käitlemisel, samuti tubaka ning tubakatoodete sisseveo, tootmise ja hulgimüügi litsentsimisel järgida muid õigusakte.