

The Jammu and Kashmir Consumer Protection (AMENDMENT)

BILL, 2015

A Bill to amend the Jammu and Kashmir Consumer Protection Act of 1987.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-Sixth year of the Republic of India as follows:-

1. Short title and Commencement.

(1) This Act may be called the Jammu and Kashmir Consumer Protection (Amendment) Act, 2015.

(2) It shall come into force from the date of its publication in the Government Gazette.

2. Amendment of 2, Act XVI of 1987:-In section 2 of Jammu and Kashmir Consumer Protection Act 1987 (hereinafter referred to as the 'Principal Act'), the following sub-sections shall be added, namely,-

i. Before sub-section 2(a), sub-section (a0) shall be added-
(a0) 'Advertisement' means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes through any notice, circular, label, wrapper, invoice or other documents.

ii. After sub-section 2(aa), sub-section 2(aaa) shall be added-
"Authority" and "State Authority" mean the State Consumer Protection Authority.

iii. After sub-section 2(c)(v), sub-section 2(c)(vi) shall be added-
(vi) he has suffered a loss due to an unfair contract entered into by him.

iv. After sub-section 2(aaa), sub-section 2(aaaa) shall be added-(aaaa) 'Claimant' in relation to product liability means any person, including a class of persons, who brings a product liability action, and if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if such an action is brought through or on behalf of a minor, the term includes the claimant's parent or guardian.

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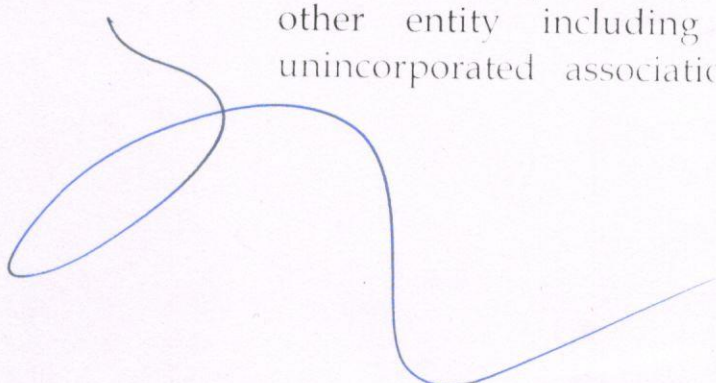
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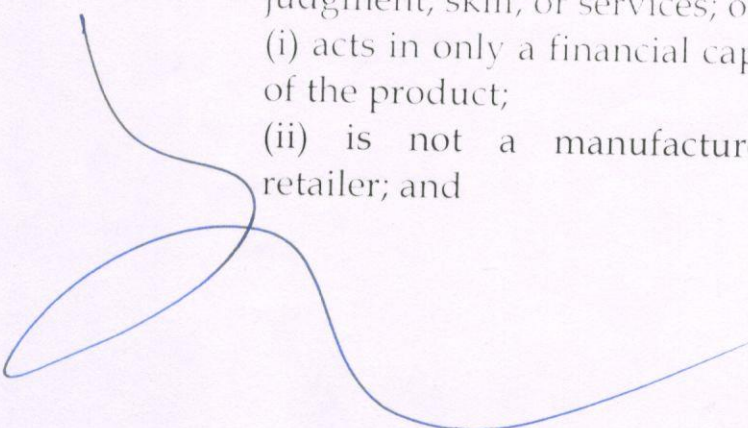
- v. After sub-section 2(d), new Explanation shall be added- (the existing Explanation shall be reads as Explanation-1)- Explanation 2: For the purposes of this clause buying of goods, hiring/availling of services is inclusive of the transaction made through any mode, inclusive of but not limited to offline, online through electronic means, teleshopping, direct selling etc.
- vi. After sub-section 2(e), sub-section 2(ee) shall be added- 2(ee) "Consumer Fora" means the State Consumer Forum, Divisional Consumer Forum and the District Consumer Forum.
- vii. In sub-section 2(g), sub-section 2g(ii) shall be added- "(ii) any act of omission or commission which causes any damage to the consumer on account of negligence or consciously withholding of relevant information to the consumer.
- viii. After sub-section 2(g), sub-section 2(ga) shall be added- (ga) "design" means the intended or known physical and material characteristics of a product and shall include any intended or known formulation or content of the product and the usual result of the intended manufacturing or other process used to produce the product.
- ix. After sub-section 2(ga), sub-section 2(gb) shall be added- (gb) "direction" means direction issued by the Government to the Consumer Fora.
- x. After sub-section 2(h), sub-section 2(hh) shall be added- (hh) "electronic form" shall have the meaning assigned to it under clause(r) of sub-section(1) of section 2 of the Information Technology Act, 2000.
- xi. After sub-section 2(hh), sub-section 2(hhh) shall be added- 2(hhh) "electronic intermediary" includes any person who provides technologies and/or process to enable manufacturer, trader and other persons to engage in advertising or selling various goods or services to consumers and shall further include online marketplaces and online auction sites.



- xii. After sub-section 2(hhh), sub-section 2(hhhh) shall be added-
(hhhh) "electronic record" shall have the same meaning as ascribed to it in Information Technology Act, 2000.
- xiii. After sub-section 2(hhh), sub-section 2(hhhh) shall be added-
(hhhh) 'express warranty' mean any material, positive statement, affirmation of fact, promise, or description relating to a product, including any sample or model of a product.
- xiv. After sub-section 2(i), sub-section 2(ia) shall be added-
'harm' means:
(1) damage to property other than the product itself
(2) personal physical injury, illness, or death
(3) mental anguish or emotional harm attendant to personal physical injuries or illness or damage to property; or
(4) any loss of consortium or services or other loss deriving from any type of harm described in sub-clauses (1) or (2) or (3) of this clause; but shall not include -
(a) harm caused to a product itself;
(b) damage to property under a breach of warranty theory;
(c) commercial or economic loss, including direct, incidental or consequential damages
- xv. After sub-section 2k(iii), sub-section 2k(iv) shall be added-
(iv) in the course of business conducted for that purpose, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing a product in the stream of commerce; but such term does not include:
(1) any person who is engaged in a business to design, produce, make, fabricate, construct, or remanufacture any product (or component part of a product); or,
(2) any product seller not described in sub-section (1) holding itself out as a manufacturer to the user of the
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product; except that any product seller who acts primarily as a wholesaler, distributor, or retailer of products may be a manufacturer with respect to a given product to the extent that such seller designs, produces, makes, fabricates, constructs, or remanufactures the product before its sale."

- xvi. After sub-section 2(k), sub-section 2(ka) shall be added- 'mediation' means the process by which a mediator appointed by the State Forum or Divisional Forum or a District Forum, as the case may be, mediates the dispute between the parties to the complaint/ appeal by the application of the provisions of Chapter III of the Act, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties' own responsibility for making decisions which affect them.
 - xvii. After sub-section 2(ka), sub-section 2(kaa) shall be added- (kaa) "mediator" is a neutral guide who helps the parties to find their own solution to the dispute.
 - xviii. After sub-section 2(kaa), sub-section 2(kaaa) shall be added- (kaaa) "material fact" any specific characteristic or quality of the product, but does not include a general opinion about, or praise of, the product or its quality.
 - xix. In sub-section 2(kk) word 'Divisional Forum' shall be added between words 'State Commission' and 'District Forum'.
 - xx. After existing sub-section 2m(iv), sub-section 2m(v) shall be added-
(v) any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity including any government entity or unincorporated association of persons.
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- xxi. After sub-section 2m, sub-section 2(ma) shall be added-
(ma) "political party" shall have the meaning assigned to it under clause (f) of sub-section 1 of section 2 of J & K Representation of the Peoples Act, 1951 (mb)-
- xxii. After sub-section 2(ma), sub-section 2(mb) shall be added-
(mb) 'product' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state, possessing intrinsic value which is capable of delivery either as an assembled whole or as a component part and is produced for introduction to trade or commerce; but such term does not include human tissue, blood and blood products, or organs.
- xxiii. After sub-section 2(mb), sub-section 2(mc) shall be added-
(mc) 'product liability' means the responsibility of a manufacturer or vendor of goods to compensate for injury caused by defective merchandise that it has provided for sale;
- xxiv. After sub-section 2(mc), sub-section 2(md) shall be added-
(md) "product seller" means:
(1) a manufacturer; or
(2) a person who, in the course of business conducted for that purpose, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing a product in the stream of commerce;
but such term does not include:
(a) a seller of real property, unless that person is engaged in the sale of manufactured housing or in the mass production of dwellings;
(b) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or any person who:
(i) acts in only a financial capacity with respect to the sale of the product;
(ii) is not a manufacturer, wholesaler, distributor, or retailer; and
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(iii) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

xxv. After sub-section 2(nn), sub-section 2(nnn) shall be added-
(nnn) "regional office" means the regional office of the State Consumer Authority.

xxvi. In sub-section 2(o) word telecom be added between words energy and board;

xxvii. After sub-section 2(o), sub-section 2(oa) shall be added-
(oa) 'settlement' means a final settlement by way of compromise before a mediator, which shall be deemed to be a settlement before National Forum or a State Forum or a District Forum, as the case may be.

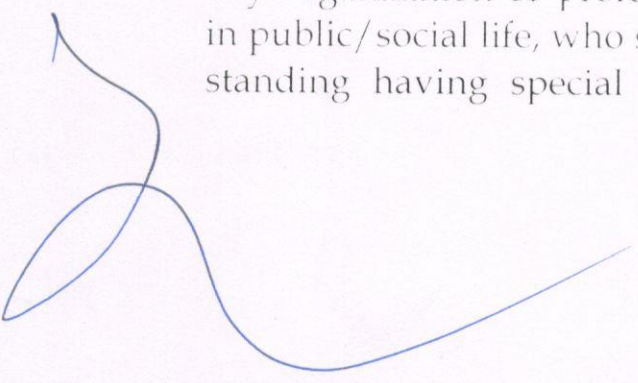
xxviii. In sub-section 2 (p) word forum be substituted to the word commission.

3. After section 6.A section 6-B. shall be added-

6.B. Establishment of State Consumer Protection Authority.-(1) The State Government shall, by notification, establish with effect from such date as it may specify in such notification, a executive agency to be known as the State Consumer Protection Authority (hereinafter referred to as the Authority) to promote, protect and enforce the rights of consumers enshrined in the Act.

(a) The State Authority shall be headed by a Commissioner. The post of Commissioner shall be of the level of Special Secretary in the Government of State.

(b) The Commissioner shall be appointed by the State Government from among persons, who are not below the age of forty five years and who are holding or have held a post equivalent to the post of Special Secretary to the Government of State, in the State Government or State Public Sector Undertaking, Autonomous Bodies, Universities etc. and also persons in private sector or persons not in formal employment in any organization or professionals who are persons of eminence in public/social life, who shall be persons of ability, integrity and standing having special knowledge of and such professional



experience of not less than fifteen years in the areas related to the consumers' rights and welfare, consumers' policy with international exposure, law, economics, business, commerce, industry etc.

(c) There shall be ~~two~~ Divisional Commissioners under the Commissioner to assist him in the functioning of the State Authority

(d) The Divisional Commissioners shall be appointed from among the persons who are not below the age of forty years and who are holding or have held a post equivalent to the post of Additional Secretary to the Government of State, in the State Government or State Public Sector Undertaking, Autonomous Bodies, Universities etc. and also persons in private sector or persons not in formal employment in any organisation or professionals who are persons of eminence in public/ social life with specialization or having adequate and expert knowledge with minimum experience of ten years in any of the areas such as consumers rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration.

(2) Each of the Divisional Commissioners shall head any one of the following five Bureaus in which she/ he has experience and expert knowledge

(a) Safety in goods and services

(b) Unfair trade practices, including Misleading advertisements

(c) Quality assurance and standards

(d) Prevention of consumer detriment and unfair terms in consumer contracts and (e) Enforcement of consumer protection laws

(2) The Commissioner shall have the powers of general superintendence, direction and control in respect of all

administrative matters of the Authority.

(3) The Commissioner and the two Divisional Commissioners shall be appointed by the State Government on the recommendation of a Selection Committee and shall hold office for a period of five years or upto the age of sixty two years, whichever is earlier. The Selection Committee shall consist of :

(a) Secretary to Government Department of Consumer Affairs and Public Distribution in the State Government --- Member

(b) Secretary to Government Department of Law, Justice and Parliamentary Affairs in the State Government -- Member

(c) Secretary to Government, Finance Department of State Government. -- Member

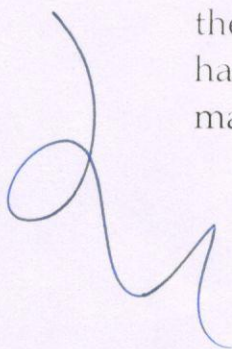
(3) The Authority may appoint such officers, experts, professionals, as it may deem necessary for the efficient performance of its functions. (It is being proposed to establish an Executive Agency, namely "State Consumer Protection Authority". This will enable prevention of exploitation of consumers and violation of their rights and to promote, protect and enforce the rights of consumers.)

6.C. Place of work and office hours. -

(1) The office of the State Consumer Protection Authority shall be located in the capital of the State and shall move with annual Darbar move from Jammu to Srinagar and vice versa and the office hours of the State Authority shall be the same as the office hours of the State Government.

(2) The full Authority comprising the Commissioner and the Two Divisional Commissioners shall sit once in a week to decide on :

a) such matters in which the area of expertise of a Bureau overlaps the area of expertise of another bureau and both the Bureaus have or are likely to have different views or perception of the matter;



b) the appeals filed before the State Authority on the orders of a Divisional Commissioner at the headquarters or on the orders of Divisional Commissioner at any of the Regional Offices of the State Authority.

6.D. The objects of the State Consumer Protection Authority. The objects of the State Authority shall be

(1) to protect and enforce the rights of consumers such as the right to be protected against the marketing of goods / product an services which are unsafe or hazardous to life and property; the rights to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be;

(2) to prevent unfair trade practices as defined under section 2(r).

(3) to ensure that no advertisement is made of any goods or services which is misleading or deceiving or contravenes the provisions of this Act and rules and regulations made under it.

(4) to ensure that no person engages himself in unfair trade practices or takes part in the publication of any advertisement which is false or misleading.(It is necessary to lay down the objects of the ~~Central~~^{State} Consumer Protection Authority for furtherance of the aims and objectives sough to be achieved in the Act.)

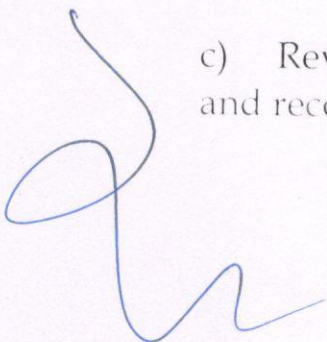
6.E: Functions and powers of the Authority. -

(1) Functions of the Authority:

a) Inquire suo-motu or on a complaint or a direction from the Government or the judiciary, violations of consumer right enumerated in the Consumer Protection Act.

b) Intervene in any proceeding in any allegation of violation of consumer rights before a court in the State, with the permission of such a court.

c) Review factors that inhibit the enjoyment of consumer right and recommend appropriate remedial measures

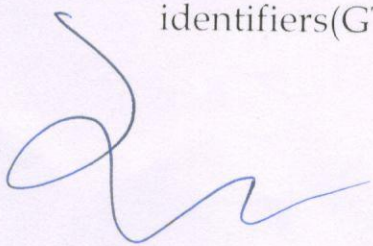


- d) Study existing laws and their enforcement and suggest changes to make the same more efficacious
- e) Review safeguards provided under the Constitution or any law for the time being in force for the protection of consumers and recommend measures for their effective implementation
- f) Study international practices, laws, covenants on consumer rights and make recommendations for their adoption wherever necessary, to ensure effective enforcement of consumer rights
- g) Undertake and promote research in the field of consumer rights
- h) Spread and promote awareness about the rights of consumers and consumers' literacy
- i) Encourage efforts of non-governmental organization and other institutions working in the field of consumer rights
- (j) Cooperate and work with consumer protection agency worldwide and take part in international conferences and seminars in this area
- k) Monitor practices inimical to consumer interest and take adequate measures to prevent them

(2) Powers of the Authority:

(a) Conduct investigations, either suo-motu or on a complaint, into violations of consumer rights enumerated in the Consumer Protection Act, 1987, conduct search and seizure of documents/records/articles and other forms of evidence, summon delinquent manufacturers, advertiser and service providers and to record oral evidence and direct production of documents and records, all of the foregoing powers to be exercised in accordance with the rules issued under this Act.

(b) Order, on the basis of such investigations, recall of goods found to be unsafe requiring use of unique and universal goods identifiers(GTIN's) or withdrawal of services found to be unsafe



or hazardous and order reimbursement of the price of the goods (or services) so recalled, to purchaser of such goods or services.

(c) Issue safety notices and alerting consumers against unsafe

d) Direct, on the basis of its investigations, for e goods/services. discontinuation of practices found to be unfair and prejudicial to consumer interest.

(e) Order withdrawal of advertisements found to be false or misleading and direct issuance of corrective advertisements wherever necessary.

(f) Declare as null and void, terms in consumer contracts found to be unfair to the consumer.

(g) Accept an undertaking from those who may have breached the law, that they would desist from such conduct in future and enforce the undertaking;

(h) File class action suits at ^{State} National Forum. There shall be an exclusive Bench in the ^{State} National Forum to hear class action suits filed by the ^{State} Central Authority for speedy adjudication of the matter. (i) Draw up code of conduct or fair business practices and direct the business to comply with the same.

(j) Take criminal matters to the court of competent jurisdiction;

(k) Impose administrative penalty on those found violating any of the provisions of such laws which seek to protect the interest of the Consumers e.g. the Consumer Protection Act, 1980, the Legal Metrology Act, 2009 etc. The following factors inter-alia will be taken into account by the Central Authority in determining the amount of administrative monetary penalty:

(1) the impact of the violation with respect to population and area affected,

(2) the frequency and duration of the violation,

(3) the vulnerability of the class of persons likely to be adversely



affected by the violation, and

(4) the gross revenue from sales effected by the conduct.

(l) Take cognizance of misleading advertisements

(m) Enforce injunctions against conduct of the industry for exploiting consumers' interest.

(n) Advise to the Departments on Consumer Welfare measures.

(3) Powers of the Authority to inquire into unfair trade practices and misleading advertisement.-

(1) The Authority shall inquire into unfair trade practices and any false or misleading advertisement which may come before it for inquiry or upon its own information or knowledge and, if after such inquiry, it is of opinion that the trade practice is unfair or the advertisement is prejudicial to the public interest, or to the interest of any consumer or consumers in general or the advertisement is in contravention of the rights of the consumers, it may, by order direct that -

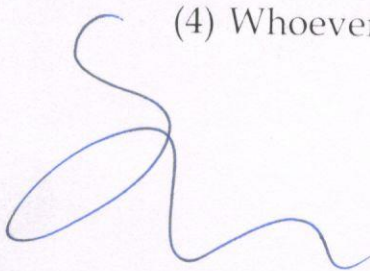
(a) the trade practice or the advertisement shall be discontinued or shall not be repeated;

(b) the trade practice or the advertisement shall stand modified in such manner as may be specified in the order;

(2) The Authority may, instead of making any order under this section, permit any party to continue the trade practice or the advertisement, if it so applies and takes such steps within the time specified by the Authority as may be necessary to ensure that the trade practice or the advertisement is no longer prejudicial to the public interest or to the interest of any consumer or consumers in general

(3) Whoever contravenes the restrictions on unfair trade practice or misleading advertisements as provided in section 11 and

(4) Whoever contravenes any of the provisions of this Act or the



rules made thereunder repeatedly shall be punishable with such fine as decided to be appropriate by the Authority and wherever considered appropriate the violation may be reported to local police/ law and order authority for criminal prosecution against such offenders.(The functions and powers of the Authority are required to be specified to function effectively.)

6.F. Regional Offices.- (1) The Authority may have such number of regional offices and the location of such offices as may be notified by the State Government from time to time for the purpose of suo-motu investigations into anti-consumer conduct and also to investigate into the complaint of a consumer and take appropriate action in accordance with powers conferred on the Authority under Section 12 of this Act.

(2) Each regional office shall be headed by an officer of the level of Divisional Commissioner. The Divisional Commissioner at the regional office shall be competent to exercise the powers of the State Authority in the Division covered in the region. He will be competent to file consumer suits in the District Consumer Fora and Divisional Consumer Fora within his region.

(3) At district level the powers of the State Authority shall be exercised by the District Commissioner/Magistrate concerned who can suo-motu or otherwise investigate into a matter for protection as well as enforcement of the rights of the consumers and each District Collector/Magistrate shall submit a monthly report of action taken to the Deputy Commissioner of the region concerned.(For effective discharge of the functions and powers being entrusted upon the Central Authority there needs to be regional offices of the Authority in the country. The consumers will be able to approach the Authority through their nearest regional offices)

6.G Pay and allowances of the Commissioner and Deputy Commissioners.- (1) The pay and allowances of the Commissioner shall be of the level of Special Secretary to the Government of the State and that of the Divisional



Commissioners shall be of the level of Additional Secretary in the State Government.

(2) All the expenditure of the Authority shall be met from the Consolidated Fund of India. (Necessary to specify the salary and allowances of the Commissioner and Divisional Commissioner)

6.H. Removal of the Commissioner and Divisional Commissioners.-

(1)The State Government may remove the Commissioner and any Divisional Commissioner, who -

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the Commissioner or Divisional Commissioner; or

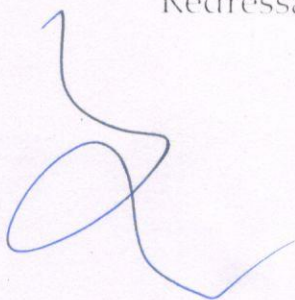
(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Commissioner or a Divisional Commissioner; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest ;or

(f) remain absent in three consecutive sittings except for reasons beyond his control.

(g) serious allegations of any commission or omission amounting to corruption.

(2) Notwithstanding anything contained in sub-section (1) of section 15, the Commissioner and any Divisional Commissioner shall not be removed from his office except by an order made by the Government on the grounds specified in clauses (d), (e), (f) and (g) of above sub-section and after an inquiry held by a Committee comprising President, State Consumer Disputes Redressal Forum and the Additional Secretary, Consumer Affairs



as per the procedure prescribed (Grounds of removal are required to be prescribed to avoid arbitrariness.)

6.1. Filing of Complaint and its Disposal.-

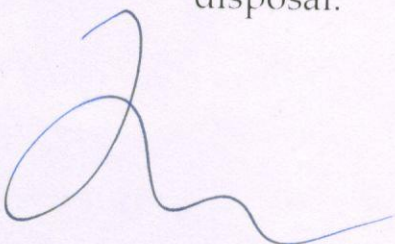
(1) A consumer may file his complaint in writing or through email, as the case may be, either to the District Collector concerned, or to the Divisional Commissioner in the Regional Office concerned or to the State Authority with an undertaking that he/she/it/ has made her complaint to only one of the aforesaid offices.

(2) In the State Authority, the Divisional Commissioner concerned with the subject matter of the complaint shall look into the complaint and take appropriate action in accordance with the powers conferred on the Authority under Section 12.

(3) All the fines imposed and recovered by the regional offices and the State Authority at the head office shall be credited to the Consumer Welfare Fund of the State Government. All the fines imposed and recovered by the District Collector shall be credited to the Consumer Welfare Fund of the State Government concerned.

(4) A complaint filed by a consumer shall be registered by the office of the District Collector or the Regional Office or State Authority, as the case may be, the same day when a complaint is received during office hours and an acknowledgement shall be sent to the consumer within a week.

(5) The complaint shall be disposed of within a month but if any complaint cannot be disposed within a month for factors beyond the control of the authority concerned, such authority must seek extension of time with adequate convincing justifications before expiry of one month from the date of registration of the complaint in which case the competent authority shall not extend time for disposal of the complaint for more than thirty days. No extension can be granted beyond this period for disposal.



(6) The competent authority to grant extension of time for disposal of complaint is the Divisional Commissioner at the Regional Office in case of District Magistrate and the full Authority in case of the a request by a Divisional Commissioner at the Regional Office or Head Office.

(7) Non-disposal of a complaint within the extended period will be treated as inefficiency and lack of performance on the part of the concerned officials/ officers in charge and will be entered in their annual performance report and for sustained non-performance an officer/ official may be removed from office. (In the new system of ~~Central~~^{State} Consumer Protection Authority, a consumer is required to file complaint to the designated officer and therefore, it is necessary to lay down the procedure for filing of complaint by a consumer. This will lead to speedy disposal of consumer complaints. Keeping speedy disposal of consumer complaints in view, action has been proposed against the officers concerned in the case of delay.)

6.J. Appeal.-

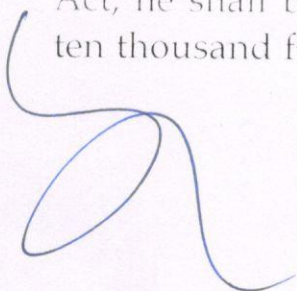
(a) Appeal against the decision of the District Collector/ District Magistrate shall lie to the Divisional Commissioner at the regional office concerned,

(b) Appeal against the decision of the Divisional Commissioner of any regional office or at the Head Office of the State Authority shall lie to the Commissioner at the State Authority. (It is necessary to provide for appellant authorities.)

6.K. Non-Compliance with the Orders of the State Authority.-

(1) The Authority may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

(2) If any person, without reasonable cause, fails to comply with the orders or directions of the Authority issued under section 12 of the Act, he shall be punishable with a fine which may extend to rupees ten thousand for each day during which such non-compliance occurs,



subject to a maximum of rupees one lakh, as the Authority may determine.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any legal proceeding, be punishable with imprisonment for a term which may extend to three months, or with a fine which may extend to rupees five lakh, or with both, as the competent court may deem fit:

Provided that the competent court shall not take Cognizance of any offence under this section save on a complaint filed by the Authority or any of its officers authorized by it. (This is intended to ensure implementation of the orders of the ~~Central~~ Authority).

6.L. Miscellaneous.-

(1) The State Authority shall work in coordination with the investigation and enforcement wings of various State and Divisional Agencies such as Bureau of Indian Standards, Legal Metrology and Income Tax Department and the Law and Order Agencies concerned of the States concerned.

(2) The State Authority shall submit a monthly report on its functioning and performance and such other reports and returns as may be directed to be submitted, to the Central Government and shall comply with such directions/ instructions as may be issued by the State Government from time to time.

(3) In the discharge of its function the ~~Central~~ ^{State} Authority shall be guided by the principle of natural justice and subject to the other provisions of the Act and of any rules made by the Government, the State Authority shall have power to regulate its own procedure.

4. Insertion of new sub-section after sub-section 7(a) and a proviso in last of the section,

(aa) a Divisional Consumer Forum to be known as the "Divisional Forum" established by the State Government in each district of the State;

Provided further that in a district where no District Forum has been established or if established, there exists at any time vacancy in the office of the President or a Member, in such case, the State Government may, by notification, direct that

(a) A District Forum, as specified in the notification, shall exercise the jurisdiction in respect of such District Forum as may be specified in the notification; or

(b) The President or a Member of a District Forum, as the case may be, shall exercise the power or discharge the functions of the President or the Member, as the case may be, of any other District Forum as may be specified in the notification.

5. Insertion of new sub-section after sub-section 8(3).

(4) The President or Member of the District Forum, on ceasing to hold office as such, shall not appear, act or plead before any District Forum in that State in which he had been the President or Member, as the case may be.


6. Insertion of new section after section 8.

8.A.(1) The Government shall determine the nature and categories of the officers and other employees required to assist the District Forum in the discharge of its functioning and provide the District Forum with such officers and other employees as it may think fit.

(2) The officers and other employees of the District Forum shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Forum OR Divisional Forum shall be such as may be prescribed by the Government:

Provided that officers and other employees employed on or before the commencement of the J & K Consumer Protection (Amendment) Act, 2015, in a District Forum or in a Divisional Forum, shall continue to be employed as such unless



the nature and categories thereof has been determined by the Government

7. Insertion of new sub-section after sub-section 8(2)(c).

d) the complainant resides or personally works for gain

(3)(a) The jurisdiction, powers and authority of the District Forum may be exercised by benches thereof;

(b) A Bench may be constituted by the President with one or more Members as the President may deem fit and each Bench shall be presided over by the seniormost member. Seniority of the members shall be determined from the date of joining of a member;

Provided that the single Member Bench shall exercise jurisdiction, power and authority in relation to such matters as may be prescribed by the Government in consultation with the State Forum.

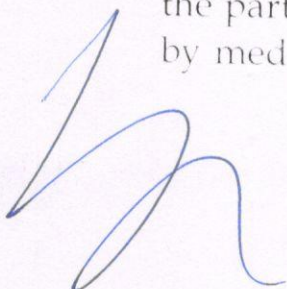
8. Insertion of new sub-section after sub-section 11(2)(b).

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may decide it on merits based on available records.

(2A) electronic intermediaries shall provide such information, documents or records as may be reasonably required in a written order by the District Forum for the purpose of the procedures under sub-section (1) and sub-section (2) of this section.

9. Insertion of section after section 10.

11.A Reference to mediation.- (1) The Forum shall, after admission of the complaint, at the first hearing of the complaint or at any stage in between the proceedings, if it appears to it that there exists elements of a settlement, which may be acceptable to the parties, direct the parties to opt for settlement of disputes by mediation under Chapter IV of the Act, except in such cases



in which the issues of grave threats to life/grave physical and/or mental injury are involved.

(2) Before directing the parties to exercise option under sub-section

(1), the Forum shall give such guidance as it deems fit to the parties, and that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for settlement of dispute by mediation.

(3) Where all the parties opt and agree for mediation, they shall apply to the forum, within five days of the direction, the forum shall, within five days of the application, refer the matter to mediation, and then the Chapter III of the Act shall apply.

Provided that the forum, in the exercise of such power, shall not refer any dispute to mediation without the written consent of all the parties to the complaint.

10.(1) (Addition of words

(a) 'restrictive trade practices or unfair trade' after words 'services or' in section 12(1),

(b) 'along with such interest on such price or charges as may be decided' after words complainant in last of section 12(1)(c).

(c) 'or unsafe' in section 12(1) (g) after words 'hazardous'.

(2) Insertion of new sub-section after sub-section (2)-(2A) Power of review: The District Forum shall have the power to review orders made by it only when there is any error apparent on the face of record
New addition

11. Insertion of section after section 12.

12.A. Composition of the Divisional Forum.— (1) Each Divisional Forum shall consist of—

(a) a person who is or has been a senior most District and Session Judge, appointed by the Government, who shall be its

President:

Provided that the Government may appoint any other person, who is or has been a senior most District Judge to be president of Divisional Forum ; and

(b) two members who are persons of ability, integrity and standing and have adequate knowledge or experience of dealing with problems relating to economics, Law, commerce, accountancy, industry, public affairs or administration one of whom to be preferably a lady,

(2) Every appointment under sub-section (1) shall be made by the Government on the recommendation of a selection committee consisting of the following, namely: —

- (i) the President of the State Divisional Forum — Chairman.
- (ii) Secretary to Government, Department of Law, Justice and Parliamentary Affairs Department of the State — Member.
- (iii) Secretary to Government CAPD Department — Member.

Provided that where the President of the Divisional Forum is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the Government may refer the matter to the Registrar General of the Hon'ble High Court for nominating a Senior District and Session Judge to act as Chairman. (It is necessary to add in order to give power for appeal against the Order of District Forum.

(3) The Government may, if it is of the opinion that any person recommended by the Selection Committee under sub-section (2) has not been found fit for such appointment, it may, within a period of two months from such recommendation and for reasons to be recorded in writing, refer the matter to the Selection Committee for fresh recommendations.

(4) The President or Member of the State Forum on ceasing to hold office as such, shall not appear, act or plead before the



State Forum or any District Forum in that State in which he had been as the President or Member, as the case may be, of the State Forum. (To avoid any vested interest)

12. Insertion of section after section 16.A-

16.B Appeals. – Any person aggrieved by an order made by the Forum in exercise of its powers conferred by sub-clause (i) of clause (a) of section 12.A may prefer an appeal against such order to the State Forum within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the State Forum shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Divisional Forum, shall be entertained by the State Forum unless the appellant has deposited in the prescribed manner fifty per cent. of the amount.

Provided further that only one appeal is allowed i.e. appeal on the orders of the District Forum shall lie to the Divisional Forum and no further appeal shall lie on the orders of the Divisional Forum in the matter. Similarly on the orders of the State Forum appeal shall lie to the High Court. (on appeals has been proposed to facilitate quick disposal of cases

12. Insertion of section after section 17-

17. A Hearing of Appeal – An appeal filed before the Divisional Forum or the State Forum shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall be ordinarily granted



by the Divisional Forum or the State Forum, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Forum:

Provided further that the Divisional Forum or the State Forum, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of an appeal being disposed of after the period so specified, the Divisional Forum or, the State Forum, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

13. Insertion of new sections after section 21 –

21.A. Establishment of Consumer Mediation Cell. - (1) The State Government shall, establish for the purposes of this Act, by notification a Consumer Mediation Cell attached to the District Forum in each district of the State.

(2) The State Government shall, establish for the purposes of this Act, by notification a Consumer Mediation Cell attached to the State Forum; and

(3) The Government shall, establish for the purposes of this Act, by notification a Consumer Mediation Cell attached to the National Forum. (Mediation is being proposed as an alternate dispute redressal mechanism. Mediation cells are required to be set up at District, State and National level.)

21.B. Composition and Functions of the Consumer Mediation Cell.-(1) Each Consumer Mediation Cell shall consist of a one Coordinator, one Data Operator and a Helper.

(2) The Coordinator of the Consumer Mediation Cell attached to District Forum shall be a person of the rank of Section Officer or equivalent; of the Consumer Mediation Cell attached to State Forum shall be a person of the rank of Under-Secretary or



equivalent and of the Consumer Mediation Cell attached to National Forum shall be a person of the rank of Deputy-Secretary or equivalent.

(3) the Coordinator of the Mediation Cell shall

(a) maintain the list of empanelled trained Mediators.

(b) maintain data on a daily basis and submit report on a monthly basis to the State Government or Central Government as the case may be. (It is necessary to give the composition and functions of the mediation cell.

21.C. Qualifications of persons to be empanelled as Mediator.- The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Section 58, namely:

(a) Retired Judicial officers;

(b) Academicians, Experts, other professionals and sector specialists with at least five years standing;

(c) retired bureaucrats and executives;

(d) Institutions, which are themselves experts in mediation and have been taking up consumer cause. (Qualifications for empanelment of mediators have been laid down with a view to facilitating mediation effectively.)

21.D. Disqualifications of Mediators.-The following persons shall be deemed to be disqualified for being empanelled as Mediators:

a) any person who has been adjudged as insolvent;

b) persons against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;

c) persons who have been convicted by a criminal court for any offence involving moral turpitude;

d) any person against whom disciplinary proceedings have



been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment;

e) any person who is interested or connected with the subject-matter of dispute or is related to anyone of the parties or to those who represent them, unless such objection is waived by all the parties-in writing;

f) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings;

g) any person who is office bearer of a political party

h) any person who has been declared medically unfit.

i) such other categories of persons as may be notified by the National/ State Commission

21. F. Preference for nominating mediators from the panel.-

The Forum shall, while nominating any person from the panel of mediators referred to in Section 58, consider his suitability for resolving the consumer dispute(s) involved and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in the mediation. (This will enable efficient persons to handle mediation.

21.G. Duty of mediator to disclose certain facts.-

(1) When a person is approached in connection with his possible empanelment as a mediator, he shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(2) Every mediator shall, from the time of his appointment-and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in sub-section (1). (This will enable transparency in empanelling mediators.)




21-H. Cancellation of appointment.- Upon information furnished by the Mediator under section 34 or upon any other information received from the parties or other persons, if the District Forum/ Commission, in which the complaint or proceeding is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the Mediator, that the said information has raised a justifiable doubt as to the Mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another Mediator.

21-I. Removal or deletion from Panel.-A person whose name is placed in the panel referred to in Section 58 may be removed or his name may be deleted from the said panel, by the District Forum, if:

- a)he resigns or withdraws his name from the panel for any reason;
- b)he is declared insolvent by any Court or is declared to be of unsound mind;
- c)he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a Mediator;
- d)the District Forum which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, and is of the view, that it is not possible or desirable to continue the name of that person in the panel, Provided that, before removing or deleting his name, under clauses (c) and (d) the District Forum/ Commission shall hear the Mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.(The grounds of removal or deletion from panel of mediators have been prescribed.)

21-J. Procedure of Mediation.- (1) the Mediator shall follow the procedure hereinafter mentioned:

- a)During the first appearance with the Mediator he shall fix, in consultation with the parties, a time schedule, the dates and the



time of each mediation session, where all parties have to be present;

b)The mediation shall take place in the Mediation Cell located within the premises of the Forum;

c)he may conduct joint and separate meetings with the parties;

d)Each party shall, within ten days before the first appearance, provide to the Mediator a brief memorandum. setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the Mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;

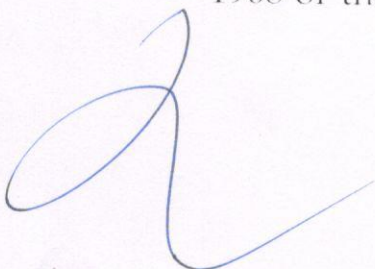
e)Each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

f)The parties shall be present personally or through their agent. No party to a dispute shall be entitled to be represented by a legal practitioner in any mediation proceedings.(It is necessary to prescribe time limit and number of sittings for completion of mediation as the purpose behind this is to provide speedy disposal of consumer disputes.)

It is necessary to prescribe time limit and number of sittings for completion of mediation as the purpose behind this is to provide speedy disposal of consumer disputes.(It is necessary to prescribe time limit and number of sittings for completion of mediation as the purpose behind this is to provide speedy disposal of consumer disputes.)

21-L Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908.-

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by principles



of natural justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

21-M Failure of the parties to comply.-

If a party fails to attend a session or a meeting notified by the Mediator or fails to produce such other information during the mediation as may be required by the Mediator within the time given, the Mediator can apply to the District Forum in which the complaint or proceedings is filed, to issue appropriate directions to that party to attend before the Mediator or produce relevant information, as the case may be, and if the District Forum finds that a party is absenting himself before the Mediator without sufficient reason, the complaint will be referred back to District Forum. (It is necessary to prescribe for settlement of agreement.)

21-N. Offer of settlement by parties.-

(a) Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.


(b) Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator.

21-O. Recording settlement and passing of Order by

District Forum.-

(1) Within seven days of the receipt of any settlement, the Forum/ Commission shall pass an order in accordance with the settlement so recorded, if the settlement disposes of all the issues in the complaint.

Provided that if the settlement disposes of only certain issues arising in the complaint or proceeding, the District Forum shall record the settlement on the date fixed and shall include the terms of the said settlement in the Order, while deciding the



other issues.

(2) Communication between mediator and the

District Forum: In order to preserve the confidence of parties in the District Forum and the neutrality of the Mediator, there should be no communication between the Mediator and the District Forum.

Provided that if any communication between the Mediator and the District Forum is necessary, it shall be in writing and copies of the same shall be given to the parties or their agent. Communication between the Mediator and the District Forum related to the case shall be limited to:

- a) about the failure of party to attend;
- b) with the consent of the parties;
- c) his assessment that the case is not suited for settlement through mediation;
- d) the parties have settled the dispute or disputes

"21-P. Product Liability and its effects on other laws,--(a)

Except as excluded under paragraph (b), a product liability action includes all actions brought for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, preparation, assembly, testing, service, warning, instruction, marketing, packaging, or labeling of any product. This Chapter establishes the exclusive theories of liability for any civil action for harm caused by a product, irrespective of the substantive theory or theories underlying the claim, including any action which before the effective date of the Act would have been based on any of the following theories:

- (1) strict liability in tort;
- (2) negligence;



(3) breach of express, implied, or statutorily established warranty;

(4) failure to discharge a duty to warn or instruct;

(5) misrepresentation, concealment, or nondisclosure; or

(6) public nuisance; or

(7) any other common law theory or theory established by statute that is the basis for an award of damages for harm caused

(b) A product liability action does not include any civil action against a manufacturer or seller for:

(1) harm caused to a product itself;

(2) damage to property under a breach of warranty theory if prohibited by the Uniform Commercial Code;

(3) commercial loss, including incidental and consequential damages in commercial setting; or

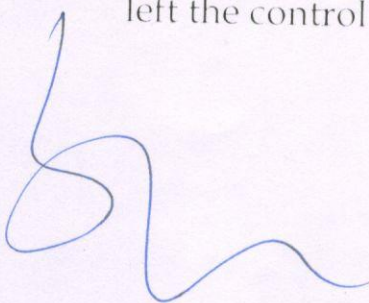
(4) commercial risks that are the subject of a contract between the manufacturer or a seller and a buyer. Suits described in Subsections (1), (2), (3), and (4) shall be governed by the Uniform Commercial Code.

(c) In any product liability action, no person is liable to a claimant for mental anguish or emotional harm in the absence of proof of related and contemporaneous personal physical injury, illness, or death.

21-Q.. Bases of Product liability:

(a) In any product liability action, a manufacturer shall be liable to a claimant if the claimant establishes all of the following by a preponderance of the evidence:

(1) the product was unreasonably dangerous when the product left the control of the manufacturer because:



a. the product contains a manufacturing defect in that it deviated in a material way from the manufacturer's specifications or from the clear majority of otherwise identical units manufactured to the same design manufacturing specifications;

b. the product is defective in design;

c. the product failed to contain adequate instructions of correct use to avoid danger or warnings of the improper/incorrect use ;
or

d. the product did not conform to an express warranty with respect to the product made by the manufacturer or product seller;

(2) the defendant was the manufacturer of the actual product that was the cause of harm for which the claimant seeks to recover compensatory damages; and

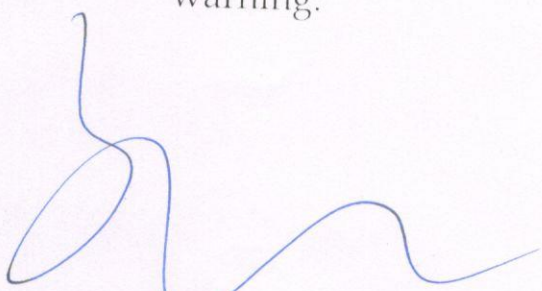
(3) the unreasonably dangerous aspect of the product was the proximate cause of the harm complained of by the claimant.

(b) Design defects. In any action alleging that a product is unreasonably dangerous because of a defective design, the claimant shall prove by a preponderance of the evidence that, at the time the product left the manufacturer's control:

(1) the manufacturer knew or, in light of then-existing scientific and technical knowledge, reasonably should have known of the danger that caused the claimant's harm; and

(2) there existed a technologically feasible and practical alternative design that would have reduced or avoided a foreseeable risk of harm without significantly impairing the usefulness or desirability of the product to the group of persons who are the intended users of the product.

(c) Failure to warn. In any action alleging that a product is defective because it failed to contain adequate instructions or warning:



(1) An adequate warning or instruction is one that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger and communicates sufficient information on the dangers and safe use of the product, taking into account the characteristics of, and the ordinary knowledge common to an ordinary consumer who purchases the product.

(2) The claimant shall prove by a preponderance of the evidence that, at the time the product left the manufacturer's control, the manufacturer knew or, in light of then-existing scientific and technical knowledge, reasonably should have known of the danger that caused the claimant's harm.

(3) A manufacturer shall not be liable for failure to instruct or warn about a danger that is known or open and obvious to the user or consumer of the product, or should have been known or open and obvious to the user or consumer of the product, taking into account the characteristics of, and the ordinary knowledge common to, the persons who ordinarily use or consume the product.


(d) Express warranty. A product may be unreasonably dangerous because it did not conform to an express warranty only if the claimant proves by a preponderance of the evidence that:

(1) the claimant (or a person acting on the claimant's behalf) reasonably relied on an express warranty made by the manufacturer about a material fact concerning the safety of the product;

(2) this express warranty proved to be untrue; and

(3) had the representation been true, the claimant would not have been harmed. A manufacturer may be subject to liability under this section although it did not engage in negligent or fraudulent conduct in making the express warranty.

21-R .Exemption from Liability



(1) Misuse and modification,--A product liability action may not be commenced or maintained against a product seller if, at the time the injury, death, or property damage occurred, the product was misused, altered, or modified in a manner that was not reasonably foreseeable, and such misuse, alteration, or modification of the product was a cause of the injury, death, or property damage.

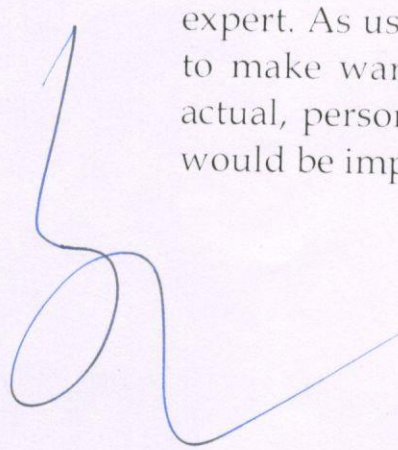
(2) Learned intermediary doctrine ,-- A prescription drug is not defective due to an inadequate warning or instruction if its manufacturer provides otherwise adequate warning or instruction to the physician or other legally authorized person who prescribes or dispenses that prescription drug for the claimant.

(3) Warnings to third parties ,-- In any product liability action based on the failure to provide adequate warnings or instructions, the manufacturer shall not be liable if:

(a) The product was used in a workplace, and the manufacturer provided warnings or instructions to the employer of the claimant, because there was no practical and feasible means of transmitting them directly to the claimant;

(b) The product was sold as a component or material to be incorporated into another product, and the manufacturer provided warnings or instructions to the manufacturer's immediate buyer, and the claimant was exposed to the component or material after it was incorporated or converted into another product; or

(c) The product was one that may legally be used or dispensed only by or under the supervision of a class of experts and the manufacturer employed means reasonably calculated to make warnings or instructions available to the using or supervising expert. As used in this subsection, "means reasonably calculated to make warnings or instructions available" does not require actual, personal notice to the expert where such personal notice would be impossible or impracticable.



4. Alcohol and drug defense:

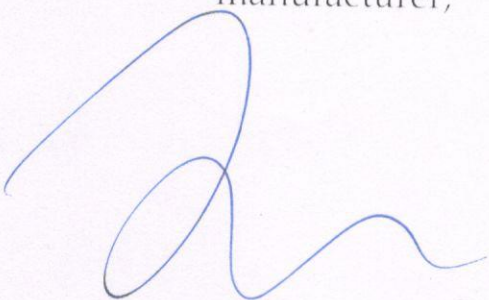
In any product liability action a manufacturer shall not be liable if:

- (a) The claimant was under the influence of intoxicating alcohol or any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant; and
- (b) The claimant as a result of the influence of the alcohol or drug was more than 50 percent at fault for such claimant's harm.

21-S- Liability of product sellers:

(a) No product liability action may be asserted against a product seller other than the manufacturer, unless:

- (1) the product seller exercised substantial control over the aspect of the design, testing, manufacture, packaging, or labeling of the product that caused the alleged harm for which recovery of damages is sought;
- (2) the product seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought;
- (3) the product seller made an express warranty as to such product independent of any express warranty made by a manufacturer as to such product, such product failed to conform to the product seller's warranty, and the failure of such product to conform to the warranty caused the harm complained of by the claimant;
- (4) the claimant is unable, despite a good faith exercise of due diligence, to identify the manufacturer of the product;
- (5) the manufacturer is not subject to service of process under the laws of the state; or (6) the court determines that the claimant would be unable to enforce a judgment against the manufacturer;



(b) A product seller other than a manufacturer is liable to a claimant on the basis of negligence if the claimant establishes that:

(1) the product seller sold the product involved in such action;

(2) the product seller did not exercise reasonable care: (a) in assembling, inspecting, or maintaining such product; or (b) in passing on warnings or instructions from such product's manufacturer about the dangers and proper use of such product; and

(3) such failure to exercise reasonable care was a proximate cause of the harm complained of by the claimant.

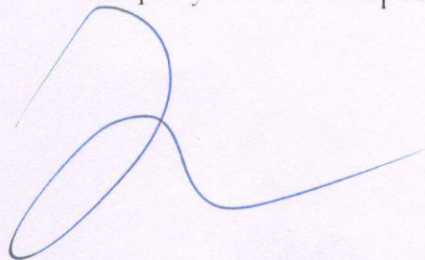
21-T. Subsequent remedial measures:

(a) In any product liability action, evidence of any measure taken by a manufacturer after the occurrence of a claimant's harm which, if taken previously, would have made the harm less likely to occur is not admissible to prove liability.

(b) Evidence described in Subsection (a) may be admitted only if necessary to prove ownership, control, or feasibility of precautionary measures, if these issues are controverted

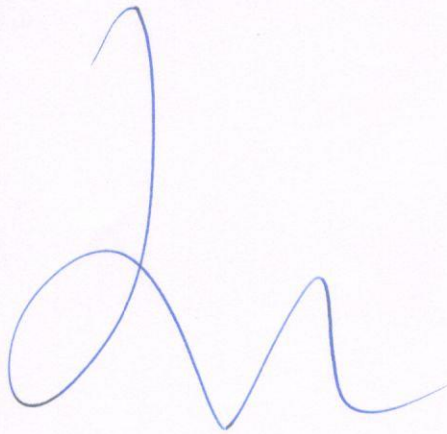
21-U. Concert of action:

In any product liability action, a manufacturer or product seller shall not be liable to the claimant on any theory of express or implied agreement among sellers, parallel behavior, or independent adherence to industry-wide standards unless the claimant proves, by a preponderance of the evidence, that the seller engaged in concert of action. "Concert of action" means the conscious and deliberate agreement to, acknowledgment of, and collaborative participation in wrongful conduct by two or more persons who do not have the relationship of master and servant, principal and agent, parent and subsidiary, affiliates, or employer and employee.



21-V. Product Identification Requirement:

Proof that the product seller designed, formulated, produced, constructed, created, assembled, or rebuilt the type of product in question is not proof that the product seller formulated, produced, constructed, created, assembled, or rebuilt the actual defective product in the product liability action. A product seller may not be held liable in a product liability action based on market share, enterprise, or industry-wide liability.

A handwritten signature in blue ink, consisting of a large, stylized initial 'D' followed by a series of loops and a final flourish.