

(S. B. 462)  
(Conference)

**(No. 118-2013)**

(Approved October 14, 2013)

## **AN ACT**

To amend Section 12-A of Chapter III of Act No. 213-1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” in order to eliminate the primary and exclusive jurisdiction of the Telecommunications Regulatory Board of Puerto Rico to hear class actions filed by users for violations of the provisions of the Puerto Rico Telecommunications Act and/or the regulations of the Telecommunications Regulatory Board of Puerto Rico, and restore said jurisdiction to the Court of First Instance and reestablish the applicability of Act No. 118 of June 25, 1971, as amended, to class actions that are currently being heard or that are filed by users of telecommunications, cable, and satellite television services; add a new Section 12-B to Chapter III of Act No. 213-1996, as amended, to establish the Inter-Jurisdictional Certification mechanism in class actions for telecommunications, cable, and satellite television services; amend Section 3 of Act No. 118 of June 25, 1971, as amended, to grant the Telecommunications Regulatory Board of Puerto Rico the same powers granted thereunder to the Secretary of the Department of Consumer Affairs when a class action involves services that are under the jurisdiction of the Board; and other purposes.

### **STATEMENT OF MOTIVES**

Act No. 118 of June 25, 1971, as amended, (“Act No. 118”) was adopted to address the problems faced by consumers as a result of the deceitful, misleading, or fraudulent practices by their goods and services providers which did not justify an individual lawsuit because they involve small sums of money. In this sense, Act No. 118 aimed to be a deterrent intended to prevent and discourage dishonest practices by the companies that provide goods and services to consumers because even though the claim could represent a small sum for each individual, in the aggregate, it could represent a large sum of money for the company. When hearing these class actions,

the rigorous procedure of the adjudicating forum should guarantee the due process of law to which companies are entitled in view of the possible loss of a proprietary interest.

The Puerto Rico Telecommunications Act, Act No. 213-1996, as amended, created the Telecommunications Regulatory Board of Puerto Rico (“Board”) as an administrative agency with primary jurisdiction to regulate telecommunications on the Island. Section III-12 of Act No. 213-1996, empowers the Board to review the adjudications by telecommunications and cable television companies of complaints filed by users against said companies; provided said petitions for review are filed within the jurisdictional period provided therein. Act No. 11-2011 added subsection (b) to Section II-6 of Act No. 213-1996, to confer the Board jurisdiction to regulate the service contract terms and the conditions of DBS companies rendering such services over any person with a direct or indirect interest in such companies and to address consumer complaints related to the services offered by DBS companies within Puerto Rico.

Act No. 138-2005 added Section III-12-A to Act No. 213-1996 to grant primary and exclusive jurisdiction to the Board to adjudicate any claim for damages filed by a user individually alleging violations of the provisions of Act No. 213-1996, of the regulations of the Board, or of the service contracts, up to five thousand dollars (\$5,000) per incident. In the case of claims exceeding the aforementioned sum of five thousand dollars (\$5,000), Section III-12-A provides that the Board shall have primary and exclusive jurisdiction to determine whether there has been a violation of Act No. 213-1996, of the regulations of the Board, or of the service contract, and shall issue a resolution to such effect so that the Court of First Instance may then determine whether damages have been caused as a result of said violation,

and the amount of the compensation. This Section III-12-A excludes complaints where the “user” is a telecommunications or cable television company, and the damages are limited to financial damages.

On the other hand, Section III-12-A, adopted under Act No. 138-2005, granted primary and exclusive jurisdiction to the Board to adjudicate any class action for damages filed by users for violations of the provisions of Act No. 213-1996, and/or the regulations of the Board. The jurisdiction of the Board over class actions is limited to class actions where telecommunications or cable television companies are not members of the group. For these class actions, Section III-12-A adopted under Act No.138-2005, provided that the compensation to be granted shall not exceed five million dollars (\$5,000,000) or half percent (1/2%) of the assets of the defendant according to its books, whichever is less. Furthermore, Section III-12-A adopted under Act No.138-2005, provided that the provisions of Act No. 118, the Goods and Services Consumers Class Action Act, would not be applicable. Section 3 of Act No. 138-2005 made said amendments applicable retroactively to class actions initiated prior to the approval of the Act, specifically providing that it would have effect over any procedure pending on the effective date of said Act.

The legislative record shows that Act No. 138-2005 originated from H.B. 1225, which, as originally introduced on March 14, 2005, had the purpose of providing users a forum through which they could file their individual claims and be compensated, through a simple administrative procedure, for those damages caused by the telecommunications service providers up to a maximum of fifty thousand dollars (\$50,000). The Favorable Joint Report on H.B. 1225 also shows that the House Committees on Socioeconomic Development and Planning and on Consumer Affairs recommended that said amount be reduced to \$5,000.00.

Now then, even though the spirit or intent of H.B. 1225, which became Act No. 138-2005, was to strengthen the public interest of providing the users of telecommunications services with a speedy and informal process for compensation for damages suffered, the final text thereof promoted the opposite by imposing a cap of five million dollars (\$5,000,000) which limits the compensation that users would receive in the event that they chose to group together as a class. The legislative record on H.B. 1225 does not show that there was a compelling interest or a public policy reason to grant this privilege to telecommunications and cable television companies. Furthermore, the legislative record does not provide any justification or recommendation for the retroactive application of the law and for its application to class actions pending before the court, as it in fact occurred. It raises some suspicion that the language of H.B. 1225 was modified so that it would have retroactive application during the House Session of October 3, 2005, and that, on that same day, the measure was approved in the Senate by discharge.

Moreover, Act No. 138-2005 also violates the due process of law that telecommunications and cable television companies are entitled to—which stand to lose their proprietary interest—since it deprived the Court of First Instance of jurisdiction to hear class actions concerning the services they provide, despite the Court being the forum with the infrastructure and knowledge needed to hear this complex and massive type of litigation. In turn, said statute transferred primary and exclusive jurisdiction over this type of class action to the Board which, inherently, is an informal administrative forum engaged mainly in regulating the industry and the adjudication of small and individual claims filed by users. In this sense, the Board seems to be an inadequate and ineffective forum for the processing and adjudication of class actions that could group hundreds of thousands of claimants. There is no

justification whatsoever in the legislative record to impair the right of users to obtain the compensation they are entitled to, or to infringe the rights of defendant to due process of law.

As we stated previously, Act No. 138-2005 excluded class actions regarding the Telecommunications Act from the benefits of Act No. 118, which was created for the purpose of making it easier for consumers to claim small amounts of money from big companies. It was thus set forth in the Statement of Motives of Act No. 118, when it affirmed that:

Usually claims of the consumers involve such small amounts of money that they do not justify an individual suit; it is more economical and fair that claims essentially identical be filed in a single class suit on behalf of all consumers who have been cheated and deceived... This type of action compensates the inability of the individual consumer to litigate small individual losses by permitting that one or more representatives of a group of consumers with similar damages may bring a suit on behalf of the class... The latter are forced to consider not only the direct economic loss of the class suit but also the publicity and public reaction with the entailing loss of time, name, and prestige. In the interest of discouraging the improper and deceitful conduct of the suppliers of goods and services to consumers, the Legislature of Puerto Rico considers it of imperative necessity to establish the consumer class suit.

Inexplicably, Act No. 138-2005 prevents customers of telecommunications services from organizing a class action related to the Telecommunications Act, thus excluding them from the aforementioned benefits provided under Act No. 118. Thus, Act No. 138-2005 granted telecommunications companies the privilege of becoming the only private entities in our jurisdiction that are exempt from the application

of Act No. 118, *supra*. The legislative records contain no justification whatsoever for the granting of such preferential treatment to the telecommunications industry which is discriminatory against the users.

Although none of the deponents suggested an amendment to H.B. 1225 to grant primary jurisdiction to the Board to hear class actions or to impose a limit to the damages that could be awarded in class actions, the following language was included in the Bill:

Regardless of what has been provided in any other provision of this Act, the Board shall have primary and exclusive jurisdiction to hear any class action filed by the users for violations of the provisions of this Act and the regulations of the Board or claims related to telecommunications and cable services, provided they are not between telecommunications and cable companies. The total compensation that may be granted in these cases shall never exceed the amount between five million dollars (\$5,000,000) and one-half percent (1/2%) of the assets of the defendant according to its books, whichever is less. The provisions of Act No. 118 of June 25, 1971, as amended, shall not apply to the class suits herein mentioned. The Board shall approve regulations to adjudicate cases of class actions, which should be in agreement with the parameters established by the jurisprudence for those purposes.

The aforesaid appears to have been a legislation of privilege whose only effect was to protect the PRTC from a lawsuit filed by consumers that had already been certified as a class action by the Court of First Instance and that was being litigated at the time of its approval (*Fernando Márquez, et al, v. Puerto Rico Telephone Company*, DCD2004-0723). To this day, no current or past member of this Legislative Assembly has ever claimed to be or been recognized as the author of said language; thus, it is evident that the same was improperly incorporated to H.B. 1225.

If H.B. 1225 is examined as it was originally drafted, there is no reference whatsoever to class actions, and much less of a compensation limit for users of telecommunications services. Surprisingly, said language was included without it being mentioned in any testimony or in the report of the Committee which evaluated it at that time. Furthermore, the measure was not debated on the floors of the House or the Senate. Therefore, Act No. 138-2005, as it was finally adopted, eradicated the original legislative intent set forth in the Statement of Motives of H.B. 1225, which merely intended to protect the users.

In light of the foregoing, it is necessary to amend Section 12-A of Chapter III of Act No. 213-1996, in order to eliminate the primary and exclusive jurisdiction of the Board to hear class actions filed by users for violations of the provisions of the Puerto Rico Telecommunications Act and/or the regulations of the Board, and restore said jurisdiction to the Court of First Instance. This Legislative Assembly deems that the certification of a class action is a matter of substantive law, and the forum with the expertise and infrastructure needed to hear such lawsuits is the General Court of Justice. It also recognizes that the rigorousness of the judicial forum safeguards the right to due process warranted by the telecommunications and cable television companies since they risk the loss of their proprietary interest. Furthermore, by restoring the jurisdiction to the courts, and applying Act No. 118 to these class actions, the class compensation cap that had been promulgated by Act No. 138-2005 is eliminated. However, recognizing that telecommunications controversies before the courts could entail extremely technical matters of which the Board could have expert knowledge, an inter-jurisdictional certification mechanism is established so that by petition of parties or the court, the Board may be directed to certify whether the defendant company in the class action violated any of the provisions of Act No. 213-1996, or the regulations of the Board.

Furthermore, recognizing that Act No. 11-2011, conferred the jurisdiction to regulate the terms and conditions of the service contracts of the “DBS” companies, and to hear the complaints of consumers related to such services to the Board, the language of Section 12-A of Chapter III of Act No. 213-1996 has been modified to clarify that it shall also be applicable to complaints from users of the DBS services that are under the jurisdiction of the Board. The language has also been simplified to establish that the term “Board” has been previously defined in Section I-3(r) of Act No. 213-1996. Section 3 of Act No. 118 is also amended in order for the Board to have the same powers as the Secretary of Consumer Affairs when the class action is related to services under the jurisdiction of the Board.

Lastly, in order to safeguard the rights of consumers and companies to the maximum extent possible, this Act shall be approved retroactively and shall be applicable to class actions that are currently being heard by the Telecommunications Regulatory Board, and which shall be transferred to the Court of First Instance for the continuation of proceedings, provided that said transfer does not impair contractual obligations nor affect the substantive rights acquired pursuant to the previous legislation.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 12-A of Chapter III of Act No. 213-1996, as amended, is hereby amended to read as follows:

“Section 12-A.- Actions for Damages Filed by Users

The Board shall have primary and exclusive jurisdiction to adjudicate any complaint for damages caused by any natural or juridical person to a user, except for the complaints filed by telecommunications, cable, and DBS companies against each other as a result of violations of the provisions of this Act, the regulations approved by the Board, and the service contract between the user and the telecommunications, cable, and DBS services companies up to a maximum of five thousand dollars



(\$5,000) per incident. For the purposes of this Section, the term “user” shall include those persons who receive telecommunications, cable, or DBS services from companies that are not telecommunications, cable, or DBS services companies. In the case of claims that exceed the established maximum compensation claimed, the Board shall have primary and exclusive jurisdiction to determine whether there has been a violation of this Act, its regulations, and/or the service contract. If the Board determines that there has been a violation upon holding a hearing on the merits, it shall issue a resolution and order describing the same. Once the determination is final and binding, the user may file an action for damages with the Court of First Instance accompanied by a certified copy of the resolution and order of the Board. The court shall determine whether damages have been caused as a result of said violation and shall award those established through sufficient evidence. In both cases, the Board shall call for at least one mediation hearing to try to achieve a speedy and fair resolution of the claims of the users.

In the performance of its duty of adjudicating controversies for damages up to the stipulated limit, the Board shall comply with the following:

(1) The Board, in accordance with Act No. 170 of August 12, 1988, as amended, known as the ‘Uniform Administrative Procedures Act,’ shall approve separately, within ninety (90) days following the approval of this Act, regulations for the handling of user complaints claiming damages resulting from violations of the provisions of this Act, the regulations approved by the Board, and/or the terms of the service contract of the company.

The regulations approved by virtue of this Section shall include sufficient guarantees of due process of law which shall govern the adjudicative procedure, the introduction of evidence, and discovery. Likewise, an adjudicative procedure that allows for speedy and fair resolution shall be established.

(2) The right to discovery is hereby recognized for the parties in any complaint filed with the Board pursuant to Section 12 of Chapter III of this Act in which compensation is sought for damages caused by violations of Act No. 213 of September 12, 1996, as amended. The procedure shall be conducted pursuant to the provisions of the regulations approved to such effect by the Board in accordance with Section 12-A of Chapter III of this Act.

(3) The Board is hereby directed to publish all its determinations of complaints for damages caused by violations of Act No. 213-1996, as amended, known as the 'Puerto Rico Telecommunications Act of 1996.' The provisions herein set forth shall not be construed to mean that the decisions of the Board on such complaints shall establish a precedent that binds the Board in subsequent cases. However, prior decisions of the Board that have been published pursuant to this Act may be used as guidelines to estimate any compensation for damages in a subsequent case.

The provisions of Act No. 118 of June 25, 1971, as amended, known as the 'Goods and Services Consumers Class Action Act,' shall be applicable to any complaint for damages caused by a telecommunications, cable, or DBS services company to a group of users. The Court of First Instance shall have primary and exclusive jurisdiction to certify and hear said class actions."

Section 2.- A new Section 12-B is hereby added to Chapter III of Act No. 213-1996, as amended, to read as follows:

"Section 12-B.- Inter-jurisdictional Class Action Certification

In the case of class actions brought before the General Court of Justice pursuant to Act No. 118 of June 25, 1971, as amended, by users of telecommunications, cable television, and DBS services for damages, the court may, *sua sponte* or by petition of a party, direct the Board to certify whether the company sued in the class action violated any provision of this Act or the regulations of the

Board. The certification order issued by the court shall include: (1) the question or questions whose answer is sought; (2) a list of all facts relevant to the questions that clearly demonstrates the nature of the controversy from which it arises, and which must arise from a determination from the consulting court whether for having been stipulated by the parties, or because they have been argued and adjudicated during the process; (3) an attachment which shall include the original and a certified copy of that part of the record that, in the opinion of the court, is necessary or convenient to be remitted to the Board in order for the questions to be answered. The certification petition shall be signed by the Judge of the requesting court, and remitted to the Board by the Clerk of said court bearing the signature of the clerk and the seal of the court. The Board may, *motu proprio*, or by petition of a party, and with the consent of the consulting court receive the allegations of the parties regarding the question or questions whose answers are sought. The Board shall issue and notify its answers to the questions or issues before its consideration to the requesting court and to the parties within a period that shall not exceed ninety (90) days from the date on which the Clerk of the Court notified the Board of the petition for certification, unless the court grants an extension.”

Section 3.- Section 3 of Act No. 118 of June 25, 1971, as amended, is hereby amended to read as follows:

“Section 3.-

The Court...

In its order or judgment, the Court of First Instance shall impose an amount equal to the damages determined as compensation for damages, plus a reasonable amount for attorney’s fees as determined by the Court, plus legal interest from the time the damage is caused, in cases of recklessness, and the costs of the proceedings. Any judicial action or suit filed individually may be settled through the intervention of the Department of Consumer Affairs or the Telecommunications Regulatory

Board of Puerto Rico in the case of a telecommunications, cable television, or DBS service under the jurisdiction of the Board as provided in the “Puerto Rico Telecommunications Act,” Act No. 213-1996, as amended, which shall have thirty (30) days from the receipt of the notice of the settlement from the court to state its position on the matter.”

Section 4.- The Telecommunications Regulatory Board of Puerto Rico shall adopt, repeal, and/or amend the rules and regulations as are necessary for the effective implementation of this Act within a period not to exceed ninety (90) days from the effective date thereof. Said regulations shall be adopted, amended, and/or repealed in accordance with Act No. 213-1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” and Act No.170 of August 12, 1988, as amended, known as the “Commonwealth of Puerto Rico Uniform Administrative Procedures Act.”

Section 5.- Section 3 of Act No. 138-2005 is hereby repealed.

Section 6.- Class actions that are being heard by the Telecommunications Regulatory Board of Puerto Rico at the time this Act becomes effective and on which the Telecommunications Regulatory Board of Puerto Rico has not made any adjudications of a substantive nature, shall be transferred to the part of the Court of First Instance with competence for continuation of proceedings. However, those class actions that are being heard by the Telecommunications Regulatory Board of Puerto Rico shall not be transferred to the Court of First Instance if such transfer has the effect of impairing contractual obligations or affecting substantive rights acquired under the previous legislation.

Section 7.- Severability Clause.

If any section, subsection, part, paragraph, or clause of this Act or the application thereof to any person or circumstance, were held to be unconstitutional by a court with jurisdiction, the ruling to such effect shall not affect or invalidate the

remaining provisions of this Act. The effect of said ruling shall be limited to the section, subsection, part, paragraph, clause, or application thereof thus held to be unconstitutional.

Section 8.- This Act shall take effect immediately after its approval and shall apply to any proceeding pending on the date of effectiveness or initiated afterwards.