

17:16C-62

LEGISLATIVE FACT SHEET

ON

*Retail Installment Sales;
Definitions*

N.J.S.A. 17:16C-62

(Amendment)

LAWS OF 1960

CHAPTER 41

SENATE 201

ASSEMBLY

INTRODUCED *April 11*

BY *Waddington*

STATEMENT

YES

NO

AMENDED DURING PASSAGE

YES *20CR*

NO

*AMENDMENTS
DURING PASSAGE
SHOWN IN ITALICS*

HEARING *No*

VETO *No*

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SENATE, No. 201

STATE OF NEW JERSEY

INTRODUCED APRIL 11, 1960

By Senators WADDINGTON, FOX, CRANE, HARPER, LYNCH, COWGILL,
RIDOLFI, LANCE, DUMONT, JONES and OZZARD

Referred to Committee on Judiciary

AN ACT to define and regulate installment sales of goods and services used or furnished in the modernization, rehabilitation, repair, alteration or improvement of real property, and to provide for licensing of home improvement contractors and home financing agencies and providing penalties for violations.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. Unless the context otherwise indicates,

2 (a) "Goods" means all chattels personal which are furnished or used in
3 the modernization, rehabilitation, repair, alteration or improvement of real
4 property except those furnished or used for a commercial or business pur-
5 pose or for resale, and except stoves, freezers, refrigerators, air conditioners
6 other than those connected with a central heating system, hot water heaters
7 and other appliances furnished for use in a home and designed to be remov-
8 able therefrom without material injury to the structure, *and except chattels*
8A *personal under a contract in which the cash price is \$300.00 or less and which*
8B *is subject to the Retail Installment Sales Act of 1960.*

9 (b) "Services" means labor, equipment and facilities furnished or used
10 in connection with the installation or application of goods in the moderniza-
11 tion, rehabilitation, repair, alteration or improvement of real property;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

12 (c) "Home repair contract" means an agreement, whether contained in 1
13 or more documents, between a home repair contractor and an owner to pay
14 the time sales price of goods and related services in installments over a period
15 of time greater than 3 months [from the execution of the contract];

16 (d) "Home repair contractor" means any person engaged in the busi-
17 ness of selling goods and related services pursuant to a home repair contract;

18 (e) "Commissioner" means the Commissioner of Banking and Insur-
19 ance of New Jersey and includes any deputies or employees of the depart-
20 ment designated by him to administer and enforce this act;

21 (f) "Official fees" means the fees to be paid to a public officer for ob-
22 taining any permit or filing any lien or mortgage taken or reserved as secur-
22A ity pursuant to a home repair contract;

23 (g) "Cash price" means the cash sales price for which the home repair
24 contractor would sell the goods and services which are the subject matter of
25 a home repair contract if the sale were a sale for cash rather than an install-
26 ment sale;

27 (h) "Down payment" means all payments made in cash to the home
28 repair contractor and all allowances given by the home repair contractor to
29 the owner prior to or substantially contemporaneous with the execution of
29A the home repair contract;

30 (i) "Credit service charge" means that amount by which the time sales
31 price exceeds the aggregate of the cash price and the amounts specifically
32 included for official fees;

33 (j) "Time sales price" means the total amount to be paid pursuant to
34 the contract excluding default charges authorized under this act;

35 (k) "Owner" means a person who buys goods or services pursuant to a
36 home repair contract;

37 (l) "Home financing agency" means and includes any person, *other than*
38 *a home repair contractor*, engaged, directly or indirectly, in the business of
39 purchasing, acquiring, soliciting or arranging for the acquisition of home re-
40 pair contracts or any obligation in connection therewith by purchase, dis-
41 count, pledge or otherwise; and

42 (m) "Holder" means any person who is entitled to the rights of a home
43 repair contractor under a home repair contract.

1 2. Every home repair contract:

2 (a) shall be in writing and contain the entire agreement between the
3 owner and the home repair contractor;

3A (b) shall state the names and addresses of all parties, the dates when
4 executed by the parties and contain a description of the goods and serv-
5 ices;

6 (c) shall be completed in full without any blank spaces to be filled in
7 after the contract is signed by the owner, except for serial numbers or iden-
8 tifying marks which are not available for the description of the goods at
9 that time;

10 (d) shall contain the following notice in 10-point bold type or larger, di-
11 rectly above the space provided for the signature of the owner:

12 "NOTICE TO OWNER

13 Do not sign this contract in blank.

14 You are entitled to a copy of the contract at the time you sign.

15 Keep it to protect your legal rights."; and

16 (e) shall state [the amount of] [that] *if workmen's compensation and*
17 *public liability insurance are carried by the home repair contractor and ap-*
18 *plicable to the work to be performed under the contract and if the home re-*
19 *pair contractor is qualified as a self-insurer pursuant to Title 34.*

1 3. No home repair contract shall contain:

2 (a) any acceleration clause under which any part or all of the time bal-
3 ance not yet matured may be declared due and payable because the holder
4 deems himself to be insecure;

5 (b) any agreement to pay any amount other than the time sales price
6 of the goods and services furnished under the contract, *provided that a retail*
6A *installment contract under the Retail Installment Sales Act of 1960 may be in-*
6B *cluded in a home repair contract;*

7 (c) any power of attorney to confess judgment or any other power of
8 attorney;

9 (d) any provision relieving the home repair contractor [or his assignee]
10 from liability upon any claim which the owner may have under the con-
11 tract;

12 (e) any provisions whereby the owner waives any right of action against
13 the home repair contractor or holder or other person acting in his or their
14 behalf for any act committed in the collection of the payments under the
15 contract or in the repossession of the goods, the subject matter of the home
16 repair contract;

17 (f) any assignment of or order for the payment of any salary, wages,
18 commissions or other compensation for services, or any part thereof, earned
19 or to be earned;

20 (g) any provision for a payment or credit to any owner for the privilege
21 of placing any sign on the premises where the work is being done or for rec-
22 ommending to the home repair contractor the names of any person or per-
23 sons, who might be interested in making an installment home repair contract
24 *unless such provision has been approved by the commissioner.*

1 4. Every home repair contractor shall furnish without charge a com-
2 pletely executed copy of the home repair contract to the owner immediately
3 after the owner signs such contract and any acknowledgment of receipt
4 thereof by the owner shall be in 10-point bold type or larger.

1 5. No home repair contractor shall request or accept a certificate of
2 completion signed by the owner prior to the actual completion of the work
3 to be performed under the home repair contract.

1 6. Every home repair contract shall state separately:

2 (a) the cash price of the goods and services to be furnished;

3 (b) the down payment;

4 (c) the unpaid cash balance which is the difference between subsections
5 (a) and (b);

6 (d) the official fees;

7 (e) the principal balance, which is the sum of subsections (c) and (d);
8 (f) the credit service charge;
9 (g) the time balance, which is the sum of subsections (e) and (f), the
10 number of installments required, the amount of each installment and the
11 due dates thereof.

1 7. Every home repair contract shall provide for the payment of the time
2 balance at substantially equal intervals of time and in substantially equal
3 amounts. When appropriate for the purpose of facilitating payment, the
4 contract may provide for payments on a schedule which reduces or omits
5 payments over a period or periods not in excess of 93 days in any 12-month
6 period.

1 8. A home repair contractor may impose and receive a credit service
2 charge not more than the following:

3 (a) in any case in which the due date of the last installment of the con-
4 tract is more than 8 months after the date of the contract, \$7.00 per \$100.00
5 per year computed on the principal balance, or \$12.00, whichever is greater;

6 (b) in any case in which the due date of the last installment of the con-
7 tract is 8 months or less after the date of the contract, \$7.00 per \$100.00
8 per year computed on the principal balance, or \$10.00, whichever is greater.

1 9. No home repair contractor or any other person shall charge, collect
2 or receive from any owner, directly or indirectly, any further or other amount
3 for costs, charges, insurance premiums, examination, appraisal service, broker-
4 age, commission, interest, discount, expense, fee, fine, penalty or other thing
5 of value in connection with a home repair contract, other than the charges
6 permitted by this act and chapter 169 of the laws of 1958, except court costs,
7 attorney's fees and the expenses of retaking and storing repossessed goods
8 which are authorized by law.

1 10. (a) A home repair contract may provide for a delinquency or collec-
2 tion charge for default in the payment of any such contract or any install-
3 ment thereof, if such default continues for a period of 10 days. Such charge
4 shall not exceed 5% of the amount of the installment in default or \$5.00 which-

5 ever is the lesser and may be collected in cash or charged to the owner's ac-
6 count. If charged to the owner's account such charge shall be levied within
7 35 days from the date of such default and written notification that such charge
8 has been made shall be mailed to the owner within 5 days from the date
9 when such charge was made.

10 (b) The home repair contract may also provide for the payment of rea-
11 sonable attorney's fees when a payment in default for a period of 10 days is
12 referred to an attorney, not a salaried employee of the holder of the contract,
13 for collection.

1 11. Whenever payment is made *in cash* on account of any home repair con-
2 tract, the person receiving such payment shall, at the time of receiving such
3 payment, furnish to the person making such payment a written receipt therefor
4 showing the date, identification of the account and the amount paid. Unless
5 notice has been given to the owner of an assignment of a home repair con-
6 tract, payment thereunder or tender thereof by the owner to the last known
7 holder of such contract shall be binding upon any holder or assignee thereof.

1 12. Any owner may satisfy in full at any time before maturity the
2 amount of any balance to become due on any home repair contract and in
3 so satisfying such debt shall receive a refund credit thereon for such antici-
4 pation of payments. The amount of such refund shall represent at least as
5 great a proportion of the credit service charge, less an acquisition cost of
6 \$15.00, as the sum of the periodical time balances after scheduled by the con-
7 tract to follow the installment date the date of prepayment bears to the sum
8 of all the periodical time balances under the scheduled payments in the
9 original contract. Where the amount of the credit for anticipation of pay-
10 ments is less than \$1.00, no refund need be made.

1 13. Upon written request from the owner, the holder of the home repair
2 contract shall deliver to the owner within 10 days from receipt of the written
3 request a statement of the owner's account showing the date and amount of
4 all payments made or credited to the account and the total amount, if any,
5 unpaid under the contract. Not more than 2 such statements shall be required
6 in any 12-month period.

1 14. *[Upon] With respect to contracts pursuant to which there is a lien,*
2 *mortgage or encumbrance upon the goods or real property, upon payment in*
3 *full by the owner of the time [balance] sales price and other amounts lawfully*
3A *due under a home repair contract, the holder shall:*

4 (a) return to the owner the original instruments evidencing indebted-
5 ness under a home repair contract which were signed by the owner or his
6 sureties or guarantors in connection with such contract, excepting such in-
7 struments as are filed with a public official and retained in the files of such
8 official;

9 (b) release all security interest in the goods and real property affected
10 by the home repair contract; and

11 (c) deliver to the owner such good and sufficient assignments, releases of
12 liens and mortgages on personal and real property and such other instru-
13 ments of title as may be necessary to vest the owner with complete evidence
14 of title.

15 *With respect to all other contracts, the holder, upon payment in full by*
16 *the retail buyer of the time sales price and other amounts lawfully due under*
17 *a home repair contract, shall furnish the owner with such instruments as the*
18 *commissioner may by regulation provide.*

1 15. All costs and charges in connection with such contract which are not
2 authorized by this act shall be unenforceable. Any payment of such costs or
3 charges shall be applied to the next maturing installment or, if the contract
4 has been fully paid, remitted to the owner and the owner shall be entitled to
5 recover all such costs or charges.

1 16. No person shall engage in the business of a home financing agency or a
2 home repair contractor in this State without first obtaining a license from
3 the commissioner as provided for in this act. Any *[banking institution] bank,*
4 *trust company or national bank or any State or Federally chartered savings*
4A *and loan association or credit union* authorized to do business in this State and
5 any licensed sales finance company shall be authorized to transact business
6 as a home financing agency, subject to all of the provisions of this act, except

7 that it shall not be required to obtain a license or pay a license fee hereunder.

8 No license issued under this act shall be transferable or assignable.

1 17. (a) Application for a license under this act shall be in writing, under
2 oath, and shall be in the form prescribed by the commissioner.

3 (b) The application shall state the name and residence and business
4 addresses of the applicant, and if the applicant is a copartnership or as-
5 sociation, of every member thereof, and if a corporation, of each of-
6 ficer and director thereof. It shall also state the address where the business
7 is to be conducted, demonstrate the financial responsibility of the applicant
8 and set forth any other information the commissioner may require.

1 18. Within 60 days after the filing of the application and the payment of
2 the fees herein set forth the commission shall:

3 (a) issue and deliver to the applicant a license to engage in the business
4 of a home financing agency or a home repair contractor in accordance with
5 the provisions of this act; or

6 (b) refuse to issue the license for any reason for which he may suspend,
7 revoke or refuse to renew any license under this act.

1 19. If the commissioner refuses to issue a license he shall:

2 (a) Notify the applicant of the denial and of his right to request a hear-
3 ing within 10 days;

4 (b) If the applicant does not request a hearing, return the sum paid as
5 a license fee;

6 (c) If the applicant requests such a hearing, give notice of the grounds
7 for refusal and hold a hearing thereon, and within 30 days after such
8 hearing the commissioner shall file a written decision containing his findings
9 and conclusions and serve a copy thereof upon the applicant.

1 20. No licensee shall transact any business subject to this act under any
2 other name or maintain an office at any other location than that designated in
3 the license. In case such location be changed, the commissioner shall en-
4 dorse the change of location on the license without charge.

1 21. Every home financing agency and every home repair contractor shall
2 pay to the commissioner at the time of making the application and annually
3 thereafter upon renewal a license fee of \$25.00.

1 22. No abatement in the amount of the said license fee shall be made if
2 the license is issued for less than 1 year, nor if the license is surrendered,
3 canceled or revoked prior to the expiration of the period for which such li-
4 cense was issued. Every license shall expire on December 31 of each year.

1 23. The commissioner may suspend, revoke or refuse to renew any li-
2 cense issued hereunder, upon 10 days' notice in writing, forwarded by
3 registered or certified mail to the principal place of business or residence
4 of such licensee, stating the contemplated action and in general the grounds
5 therefor [. After], *after* reasonable opportunity to be heard, if he shall find
6 that the licensee or any owner, director, officer, member, partner, employee or
7 agent of such licensee has :

8 (a) Made any material misstatement in the application;

9 (b) Knowingly or without the exercise of due care failed to comply with
10 or violated any provisions of this act [or any act relating to retail installment
11 contracts];

12 (c) Defrauded any retail buyer or willfully failed to perform any written
13 agreement with any owner;

14 (d) Willfully misrepresented or failed to disclose any of the material
15 particulars or the nature thereof required to be stated or furnished to the
16 owner under this act [or any act relating to retail installment contracts];

17 (e) Knowingly taken any instrument evidencing a home repair contract
18 which was signed in blank; or

19 (f) Otherwise demonstrated lack of financial responsibility, unworthi-
20 ness, bad faith or dishonesty.

1 24. The commissioner shall have power to make such investigations as
2 he shall deem necessary, and may examine the books, accounts, records and
3 files of any person who is a party to or holder of a home repair contract. The
4 commissioner shall have power to administer oaths and affirmations to any
5 person whose testimony is required.

1 25. The commissioner shall have the power to issue subpoenas to compel
2 the attendance of witnesses and the production of documents, papers, books,
3 records and other evidence before him in any matter pertaining to this act.

4 In case of a failure of any person to comply with any subpoena issued by
5 the commissioner or to testify to any matter concerning which he may be
6 lawfully interrogated, the Superior Court, on application of the commissioner,
7 may issue an order requiring the attendance of such person and the giving of
8 testimony or production of evidence. Any person failing to obey the court's
9 order may be punished as for contempt.

1 26. Every home repair contractor, home financing agency and holder of a
2 home repair contract shall maintain at its place or places of business such
3 books, accounts and records relating to all transactions under this act as will
4 enable the commissioner to enforce full compliance with the provisions
5 hereof. All such books, accounts and records shall be preserved and kept
6 available for such period of time as the commissioner may by regulation
7 require. The commissioner may prescribe the minimum information to be
8 shown in such books, accounts and records of the licensee so that such records
9 will enable the commissioner to determine compliance with the provisions of
10 this act.

1 27. No holder shall sell, transfer or assign any obligation in connection
2 with a home repair contract or any evidence of indebtedness thereunder to
3 any person who is not authorized as a home financing agency, *except that*
4 *such obligation or evidence of indebtedness may be sold, transferred or as-*
5 *signed to a State or national bank outside of this State if the contract is re-*
6 *tained by the holder and collection of payments thereon is made to the holder.*

1 28. (a) Any home repair contractor, home financing agency or holder of
2 a home repair contract and any officer, partner, member, employee, agent or
3 representative of either who shall knowingly violate any provision of this act
4 or shall directly or indirectly counsel, aid or abet such violation shall be
5 liable to a penalty of not more than \$2,500.00 for each offense. Such penalties
6 shall be enforced by summary proceedings pursuant to the Penalty Enforce-
7 ment Law (N. J. S. 2A:58-1 et seq.).

8 (b) Any person failing to comply with or violating section 16 of this act
9 shall be guilty of a misdemeanor.

1 29. If any provision of this act or the application thereof to any person
2 or circumstances is held unconstitutional, the remainder of the act and the
3 application of such provisions to other persons or circumstances shall not be
4 affected thereby.

1 30. *There is hereby established a home improvement advisory board in*
2 *the Department of Banking and Insurance. The board shall consist of the*
3 *commissioner, who shall be chairman of the board, and 8 other members ap-*
4 *pointed by the Governor with the advice and consent of the Senate. Of the*
5 *8 appointed members, 4 shall each have had practical experience as home im-*
6 *provement contractors or as home improvement material suppliers; 2 thereof*
7 *shall have had experience in financing home building or improvement loans;*
8 *and 2 shall be public members. Each appointed member shall serve for a*
9 *term of 4 years and until his successor is appointed and qualified. Of the first*
10 *members appointed 2 shall be appointed for 1 year, 2 for 2 years and 2 for 3*
11 *years.*

12 *The members of the board shall serve without compensation but shall be*
13 *reimbursed for their actual and necessary expenses in attending meetings*
14 *of the board.*

1 31. *The board shall:*

2 (a) *advise and consult with the commissioner concerning practices in*
3 *the home improvement industry, the administration of this act, and the rules*
4 *and regulations adopted to implement this act;*

5 (b) *make recommendations to the Governor and to the Legislature con-*
6 *cerning the administration and operation of this act and any amendments*
7 *thereto which it might deem necessary or advisable;*

8 (c) *advise and inform the public concerning any practices in connection*
9 *with home improvements which the board may consider contrary to the public*
10 *interest; and*

11 . . . (d) *hear and make recommendations to the commissioner in any applica-*
12 *tion, revocation or suspension proceeding in which the commissioner may*
13 *request the board to conduct such hearing.*

1 [30.] 32. This act shall be known and may be cited as the "Home Repair
2 Financing Act."

1 [31.] 33. This act shall take effect 90 days from the date of its approval
2 and apply to contracts executed after the effective date of this act.