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ASSEMBLY, No. 298

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman NIA H. GILL

District 27 (Essex)

Assemblyman WILFREDO CARABALLO

District 28 (Essex)

Co-Sponsored by:

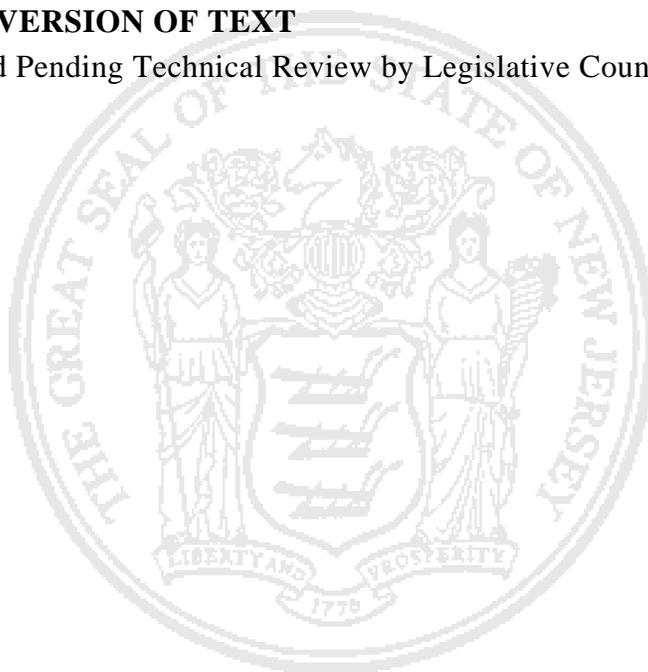
Assemblywoman Watson Coleman

SYNOPSIS

Prohibits home solicitation of senior citizens for certain home improvement loans under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A298 GILL, CARABALLO

2

1 AN ACT concerning certain senior citizens and certain loans for home
2 improvements and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. For the purposes of this act:

8 "Consumer" means an individual who seeks or acquires goods or
9 services for personal, family or household purposes.

10 "Home solicitation" means any transaction made at the consumer's
11 primary residence, except those transactions initiated by the consumer.
12 A consumer response to an advertisement is not a home solicitation.

13 "Senior citizen" means an individual who is 65 years of age or
14 older.

15 "Transaction" means an agreement between a consumer and any
16 other person, whether or not the agreement is a contract enforceable
17 by action, and includes the making of, and the performance pursuant
18 to, that agreement.

19
20 2. It shall be an unlawful practice for a person to make a home
21 solicitation of a consumer who is a senior citizen where a loan is made
22 encumbering the primary residence of that consumer for the purposes
23 of paying for home improvements and where the transaction is part of
24 a pattern or practice in violation of either subsection (h) or (i) of
25 15 U.S.C. s.1639 or subsection (e) of 12 C.F.R. s.226.32.

26
27 3. A third party shall not be liable for an unlawful practice under
28 section 2 of this act unless:

29 a. There was an agency relationship between the person who
30 engaged in the home solicitation and the third party; or

31 b. The third party had actual knowledge of, or participated in, the
32 unlawful practice.

33 A third party who is a holder in due course under a home
34 solicitation transaction shall not be liable under this act.

35
36 4. This act shall take effect on the 90th day following enactment
37 and shall apply to all contracts entered into on or after the effective
38 date.

39

40

41

STATEMENT

42

43 This bill prohibits home solicitation of a consumer who is a senior
44 citizen if a loan is made encumbering the primary residence of that
45 consumer for the purpose of paying for home improvements and that
46 transaction violates provisions of federal law which prohibit certain

A298 GILL, CARABALLO

3

1 loans being made because of the inability of a consumer to repay the
2 loan.

3 A violation of this bill is a violation of the consumer fraud law and
4 a violator would be subject to monetary penalty of up to \$7,500 for a
5 first violation and up to \$15,000 for a subsequent violation.

[First Reprint]

ASSEMBLY, No. 298

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman NIA H. GILL

District 27 (Essex)

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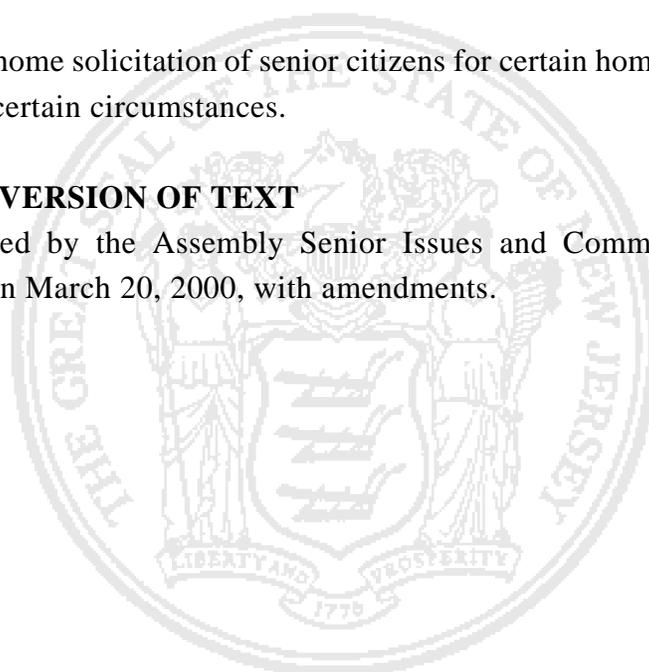
**Assemblywoman Watson Coleman, Assemblyman Barnes,
Assemblywoman Buono, Assemblyman Conaway and Assemblywoman
Greenstein**

SYNOPSIS

Prohibits home solicitation of senior citizens for certain home improvement loans under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Assembly Senior Issues and Community Services Committee on March 20, 2000, with amendments.



(Sponsorship Updated As Of: 5/12/2000)

A298 [1R] GILL, CARABALLO

2

1 AN ACT concerning certain senior citizens and certain loans for home
2 improvements and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. For the purposes of this act:

8 "Consumer" means an individual who seeks or acquires goods or
9 services for personal, family or household purposes.

10 "Home solicitation" means any transaction made at the consumer's
11 primary residence, except those transactions initiated by the consumer.
12 A consumer response to an advertisement is not a home solicitation.

13 "Senior citizen" means an individual who is ¹[65] 60¹ years of age
14 or older.

15 "Transaction" means an agreement between a consumer and any
16 other person, whether or not the agreement is a contract enforceable
17 by action, and includes the making of, and the performance pursuant
18 to, that agreement.

19
20 2. It shall be an unlawful practice for a person to make a home
21 solicitation of a consumer who is a senior citizen where a loan is made
22 encumbering the primary residence of that consumer for the purposes
23 of paying for home improvements and where the transaction is part of
24 a pattern or practice in violation of either subsection (h) or (i) of
25 15 U.S.C. s.1639 or subsection (e) of 12 C.F.R. s.226.32.

26
27 3. A third party shall not be liable for an unlawful practice under
28 section 2 of this act unless:

29 a. There was an agency relationship between the person who
30 engaged in the home solicitation and the third party; or

31 b. The third party had actual knowledge of, or participated in, the
32 unlawful practice.

33 A third party who is a holder in due course under a home
34 solicitation transaction shall not be liable under this act.

35
36 4. This act shall take effect on the 90th day following enactment
37 and shall apply to all contracts entered into on or after the effective
38 date.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASC committee amendments adopted March 20, 2000.

ASSEMBLY SENIOR ISSUES AND COMMUNITY SERVICES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 298

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 20, 2000

The Assembly Senior Issues and Community Services Committee reports favorably and with committee amendments Assembly Bill No. 298.

This bill supplements New Jersey's Consumer Fraud Act, N.J.S.A.56:8-1 et seq., to prohibit home solicitation of a consumer who is a senior citizen if a loan is made encumbering the primary residence of that consumer for the purpose of paying for home improvements and that transaction violates those provisions of the federal law which prohibit certain loans being made because of the inability of a consumer to repay the loan. A person who violates the provisions of this bill may be subjected to the monetary penalties provided under the consumer fraud law which includes, but is not limited to, a penalty of up to \$7,500 for a first violation and up to \$15,000 for a subsequent violation.

The committee amended the definition of "senior citizen" from an individual who is 65 years of age or older to an individual who is 60 years of age or older.

This bill was prefiled for introduction in the 2000 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE SENIOR CITIZENS, VETERANS' AFFAIRS AND
HUMAN SERVICES COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 298

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 2000

The Senate Senior Citizens, Veterans' Affairs and Human Services Committee reports favorably and with committee amendments Assembly Bill No. 298 (1R).

As amended by the committee, this bill supplements New Jersey's consumer fraud act, N.J.S.A.56:8-1 et seq., to prohibit home solicitation of a consumer who is a senior citizen if a loan is made encumbering the primary residence of that consumer for the purpose of paying for home improvements and that transaction violates those provisions of the federal law which prohibit certain loans being made because of the inability of a consumer to repay the loan. "Senior citizen" is defined as an individual who is 60 years of age or older.

A person who violates the provisions of this bill may be subjected to the monetary penalties provided under the consumer fraud law which includes, but is not limited to, a penalty of up to \$7,500 for a first violation and up to \$15,000 for a subsequent violation.

The committee adopted amendments to delete the definition of "consumer" that was provided in the original bill and to revise the definition of "transaction" to mean a sale as defined in N.J.S.A.56:8-1e. The committee amendments also provide that a third party shall not be liable for an unlawful practice under the bill unless there was an agency relationship between the person who engaged in the home solicitation and the third party. The amendments deleted language that provided the exemptions from liability for a third party in those cases in which the third party did not have actual knowledge of, or participated in, the unlawful practice; and for a third party who is a holder in due course under a home solicitation transaction.

The provisions of this bill would supplement current penalties available under the New Jersey consumer fraud act and would establish a per se violation of the act when the conduct is one of the specified violations of federal law.

This bill is identical to S-1277 (Sca) (Bryant/Littell) which the committee also reported favorably on this date.

[Second Reprint]

ASSEMBLY, No. 298

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman NIA H. GILL

District 27 (Essex)

Assemblyman WILFREDO CARABALLO

District 28 (Essex)

Co-Sponsored by:

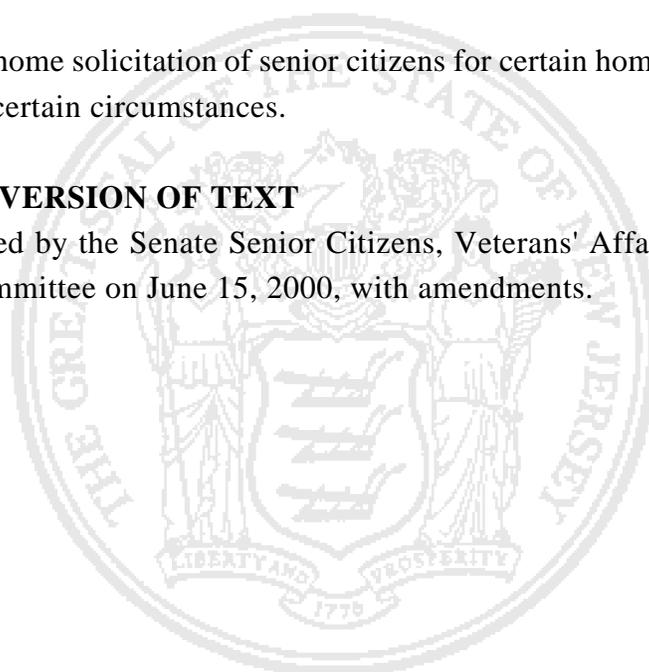
**Assemblywoman Watson Coleman, Assemblyman Barnes,
Assemblywoman Buono, Assemblyman Conaway, Assemblywoman
Greenstein, Senators Bryant, Littell, Rice and Assemblywoman Previte**

SYNOPSIS

Prohibits home solicitation of senior citizens for certain home improvement loans under certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Senate Senior Citizens, Veterans' Affairs and Human Services Committee on June 15, 2000, with amendments.



(Sponsorship Updated As Of: 6/30/2000)

1 AN ACT concerning certain senior citizens and certain loans for home
2 improvements and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. For the purposes of this act:

8 ²["Consumer" means an individual who seeks or acquires goods or
9 services for personal, family or household purposes.]²

10 "Home solicitation" means any transaction made at the consumer's
11 primary residence, except those transactions initiated by the consumer.
12 A consumer response to an advertisement is not a home solicitation.

13 "Senior citizen" means an individual who is ¹[65] 60¹ years of age
14 or older.

15 "Transaction" means ²[an agreement between a consumer and any
16 other person, whether or not the agreement is a contract enforceable
17 by action, and includes the making of, and the performance pursuant
18 to, that agreement.] a sale as defined in subsection e. of section 1 of
19 P.L.1960, c.39 (C.56:8-1)².

20

21 2. It shall be an unlawful practice for a person to make a home
22 solicitation of a consumer who is a senior citizen where a loan is made
23 encumbering the primary residence of that consumer for the purposes
24 of paying for home improvements and where the transaction is part of
25 a pattern or practice in violation of either subsection (h) or (i) of
26 15 U.S.C. s.1639 or subsection (e) of 12 C.F.R. s.226.32.

27

28 3. A third party shall not be liable for an unlawful practice under
29 section 2 of this act unless²[:

30 a. There] there² was an agency relationship between the person
31 who engaged in the home solicitation and the third party²[: or

32 b. The third party had actual knowledge of, or participated in, the
33 unlawful practice.

34 A third party who is a holder in due course under a home
35 solicitation transaction shall not be liable under this act]².

36

37 4. This act shall take effect on the 90th day following enactment
38 and shall apply to all contracts entered into on or after the effective
39 date.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASC committee amendments adopted March 20, 2000.

² Senate SSV committee amendments adopted June 15, 2000.

P.L. 2000, CHAPTER 125, *approved September 21, 2000*
Assembly, No. 298 (*Second Reprint*)

1 **AN ACT** concerning certain senior citizens and certain loans for home
2 improvements and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. For the purposes of this act:

8 ²["Consumer" means an individual who seeks or acquires goods or
9 services for personal, family or household purposes.]²

10 "Home solicitation" means any transaction made at the consumer's
11 primary residence, except those transactions initiated by the consumer.

12 A consumer response to an advertisement is not a home solicitation.

13 "Senior citizen" means an individual who is ¹[65] 60¹ years of age
14 or older.

15 "Transaction" means ²[an agreement between a consumer and any
16 other person, whether or not the agreement is a contract enforceable
17 by action, and includes the making of, and the performance pursuant
18 to, that agreement.] a sale as defined in subsection e. of section 1 of
19 P.L.1960, c.39 (C.56:8-1)².

20

21 2. It shall be an unlawful practice for a person to make a home
22 solicitation of a consumer who is a senior citizen where a loan is made
23 encumbering the primary residence of that consumer for the purposes
24 of paying for home improvements and where the transaction is part of
25 a pattern or practice in violation of either subsection (h) or (i) of
26 15 U.S.C. s.1639 or subsection (e) of 12 C.F.R. s.226.32.

27

28 3. A third party shall not be liable for an unlawful practice under
29 section 2 of this act unless²[:

30 a. There] there² was an agency relationship between the person
31 who engaged in the home solicitation and the third party²[: or

32 b. The third party had actual knowledge of, or participated in, the
33 unlawful practice.

34 A third party who is a holder in due course under a home
35 solicitation transaction shall not be liable under this act]².

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASC committee amendments adopted March 20, 2000.

² Senate SSV committee amendments adopted June 15, 2000.

1 4. This act shall take effect on the 90th day following enactment
2 and shall apply to all contracts entered into on or after the effective
3 date.

4

5

6

7

8 Prohibits home solicitation of senior citizens for certain home
9 improvement loans under certain circumstances.

CHAPTER 125

AN ACT concerning certain senior citizens and certain loans for home improvements and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

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

C.56:8-104 Definitions relative to certain loans for senior citizens.

1. For the purposes of this act:

"Home solicitation" means any transaction made at the consumer's primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation.

"Senior citizen" means an individual who is 60 years of age or older.

"Transaction" means a sale as defined in subsection e. of section 1 of P.L.1960, c.39 (C.56:8-1).

C.56:8-105 Certain home improvement loans unlawful.

2. It shall be an unlawful practice for a person to make a home solicitation of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of 15 U.S.C. s.1639 or subsection (e) of 12 C.F.R. s.226.32.

C.56:8-106 Immunity from liability for third party, exception.

3. A third party shall not be liable for an unlawful practice under section 2 of this act unless there was an agency relationship between the person who engaged in the home solicitation and the third party.

4. This act shall take effect on the 90th day following enactment and shall apply to all contracts entered into on or after the effective date.

Approved September 21, 2000.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
Laura Otterbourg
609-777-2600

RELEASE: September 21, 2000

Governor Signs Legislation to Give More Defense to Seniors from Home Solicitation

Governor Christie Whitman today signed legislation that will prohibit home solicitation of senior citizens for certain home improvement loans in particular circumstances.

"Our state has one of the largest senior citizen populations in the nation - and it's growing. This legislation is a measure designed to protect our seniors by supplementing what's already mandated under the state's consumer fraud law in the area of home solicitation," said Gov. Whitman. "It builds on the current level of consumer protection, taking it to new heights."

"Throughout my tenure as governor, I have heard the concerns of our seniors and the message has been loud and clear about how they want to maintain their independence for as long as possible," said Gov. Whitman. "I believe this piece of legislation will provide more peace of mind for the eldest members of our New Jersey family who have chosen to remain in their homes. We owe them this added security against unscrupulous practices."

A-298, sponsored by Assembly Members Gill (D-Essex) and Caraballo (D-Essex) and Senators Bryant (D-Camden/Gloucester) and Littell (R-Sussex/Hunterdon/Morris), supplements the consumer fraud law by prohibiting home solicitation of a senior citizen who is 60 years old or more if - (1) the person's primary residence is used to secure a loan to pay for home improvements; and (2) if the transaction is part of a pattern or practice in violation of certain provisions of federal consumer credit laws. For instance, the applicable federal consumer credit laws prohibit a creditor from engaging in a pattern or practice of extending credit to a consumer under certain mortgages without regard to the consumer's ability to repay.

Under the new law, a violation of the bill is a violation of the consumer fraud law. As a result, a violator would be subject to a penalty of up to \$7,500 for a first violation and up to \$15,000 for a subsequent violation.