

NJSA 56:12-14 to 56:12-18

LAWS 1981

CHAPTER 454

Bill No. A1660

Sponsor(s) Baer and others

Date Introduced May 1, 1980

Committee: Assembly Commerce, Industry & Professions

Senate Labor, Industry & Professions

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Sept. 29, 1980

Senate Feb. 2, 1981

Date of approval January 11, 1982

Following statements are attached if available:

Sponsor statement	Yes	XX
Committee Statement: Assembly	Yes	XX
Senate	Yes	XX
Fiscal Note	XX	No
Veto Message	XX	No
Message on signing	XX Yes	XX

Following were printed:

Reports	XX	No
Hearings	XX	No

6/22/81

ASSEMBLY, No. 1660

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1980

By Assemblymen BAER, BURSTEIN, VAN WAGNER, HOLLENBECK, SCHWARTZ, Assemblywoman KALIK, Assemblymen COSTELLO, RAND, SCHUCK, JANISZEWSKI, Assemblywoman GLUCK and Assemblyman VISOTCKY

Referred to Committee on Commerce, Industry and Professions

AN ACT prohibiting a seller, lessor, creditor, lender or bailee from offering or entering into certain consumer contracts or giving or displaying certain written consumer warranties, notices or signs which are in violation of the rights of consumers and providing for civil damages for violations thereof.

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

1 1. This act shall be known and may be cited as the "Truth-in-
2 Consumer Contract, Warranty and Notice Act."

1 2. No seller, lessor, creditor, lender or bailee shall in the course
2 of his business offer to any consumer or prospective consumer or
3 enter into any written consumer contract or give or display any
4 written consumer warranty, notice or sign after the effective date
5 of this act which includes any provision that violates any clearly
6 established legal right of a consumer or responsibility of a seller,
7 lessor, creditor, lender or bailee as established by State or Federal
8 law at the time the offer is made or the consumer contract is signed
9 or the warranty, notice or sign is given or displayed. Consumer
10 means any individual who buys, leases, borrows, or bails any
11 money, property or service which is primarily for personal, family
12 or household purposes. The provisions of this act shall not apply
13 to leases provided for in "The Truth-in-Renting Act" (P. L. 1975,
14 c. 310; C. 46:8-43 et seq.).

1 3. No consumer contract, warranty, notice or sign, as provided
2 for in this act, shall contain any provision by which the consumer
3 waives his rights under this act. Any such provision shall be null
4 and void. No consumer contract, warranty, notice or sign shall
5 state that any of its provisions is or may be void, unenforceable or

6 inapplicable in some jurisdictions without specifying which pro-
7 visions are or are not void, unenforceable or inapplicable within
8 the State of New Jersey.

1 4. Any person who violates the provisions of this act shall be
2 liable to the consumer whom he aggrieved or injured for civil
3 damages of not less than \$100.00 together with reasonable attor-
4 ney's fees and court costs. This may be recoverable by the con-
5 sumer in a civil action in a court of competent jurisdiction or as
6 part of a counterclaim by the consumer against the seller, lessor,
7 creditor, lender or bailee or assignee of any of the aforesaid, who
8 aggrieved or injured him. A consumer also shall have the right
9 to petition the court to terminate a contract which violates the
10 provisions of section 2 of this act.

1 5. The rights, remedies and prohibitions accorded by the provi-
2 sions of this act are hereby declared to be in addition to and cumu-
3 lative of any other right, remedy or prohibition accorded by
4 common law, Federal law or statutes of this State, and nothing
5 contained herein shall be construed to deny, abrogate or impair
6 any such common law or statutory right, remedy or prohibition.

1 6. This act shall take effect 30 days after enactment.

STATEMENT

Far too many consumer contracts, warranties, notices and signs contain provisions which clearly violate the rights of consumers. Even though these provisions are legally invalid or unenforceable, their very inclusion in a contract, warranty, notice or sign deceives a consumer into thinking that they are enforceable and for this reason the consumer often fails to enforce his rights.

Examples of such provisions are those that deceptively claim that a seller or lessor is not responsible for any damages caused to a consumer, even when such damages are the result of the seller's or lessor's negligence. These provisions provide that the consumer assumes all risks and responsibilities, and even agrees to defend, indemnify and hold harmless the seller from all liability. Other provisions claim that a lessor has the right to cancel the consumer contract without cause and to repossess its rental equipment from the consumer's premises without liability for trespass. Still other provisions arbitrarily assert the consumer cannot cancel the contract for any cause without punitive forfeiture of deposits and payment of unfounded damages. Also, the consumer's rights to due process is often denied by deceptive provisions by which he allegedly waives his right to receive legal notices, waives process of

law in the repossession of merchandise and waives his rights to retain certain property exempted by State or Federal law from a creditor's reach.

This bill prohibits businesses from offering or using provisions in consumer contracts, warranties, notices and signs that violate any clearly established right of a consumer. If such a violation occurs, the injured consumer could collect civil damages of not less than \$100.00. The consumer also would have the right to petition the court to terminate a contract which violates the provisions of this bill.

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1660

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 1980

This bill, the "Truth-in-Consumer Contract, Warranty and Notice Act," prohibits sellers, lessors, creditors, lenders and bailees in the course of their businesses from offering or using provisions in consumer contracts, warranties, notices or signs that violate any clearly established right of a consumer. Section 4, as amended by the committee, provides that a business which violates the provisions of this bill would be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 if the consumer was not injured by such a violation and for a civil penalty and actual damages if he was injured by such a violation.

In section 2 all residential leases have been exempted from the provisions of the bill. "The Truth-in-Renting Act," adopted in 1975, which contains provisions similar to those in this bill, exempts rental premises with two or less units and owner-occupied premises with three dwelling units. Because the Legislature has seen fit to exempt such rental properties and because this bill would inadvertently subject them to such provisions, the committee amended the bill to exempt all residential leases.

"Warranty" was deleted from that part of section 3 which provided that warrantors must specifically state whether any of the provisions in their warranties are void, unenforceable or inapplicable in New Jersey. The Federal Trade Commission has issued rules under the authority of the "Magnuson-Moss Warranty Act" which allow a manufacturer to alert consumers to the possible inapplicability of certain warranty provisions without specifically naming the states in which they are inapplicable. Because this provision of the bill in regards to warranties would "unduly burden interstate commerce" (15 USC 2311) and, thereby, be preempted by Federal law, the committee amended the bill to specifically exempt warranties from this requirement.

ASSEMBLY COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 1660

STATE OF NEW JERSEY

ADOPTED JUNE 9, 1980

Amend page 1, title, line 5, omit "damages", insert "penalties".

Amend page 1, section 2, line 13, after "to", insert "residential".

Amend page 1, section 2, lines 13 and 14, omit "provided for in 'The Truth-in-Renting Act' (P. L. 1975, c. 310; C. 46:8-43 et seq.)".

Amend page 1, section 3, line 4, omit "warranty,".

Amend page 2, section 3, line 8, after "Jersey", insert "; provided, however, that this shall not apply to warranties".

Amend page 2, section 4, line 2, after "to the", insert "aggrieved"; omit "whom he aggrieved or injured"; after "for", insert "a".

Amend page 2, section 4, line 3, omit "damages", insert "penalty"; after "\$100.00", insert "or for actual damages, or both at the election of the consumer,".

Amend page 2, section 4, line 8, omit "or injured".

Amend page 2, section 4, line 10, after "act", insert "and the court in its discretion may void the contract".

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1660

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1980

By Assemblymen BAER, BURSTEIN, VAN WAGNER, HOLLENBECK, SCHWARTZ, Assemblywoman KALIK, Assemblymen COSTELLO, RAND, SCHUCK, JANISZEWSKI, Assemblywoman GLUCK and Assemblyman VISOTCKY

Referred to Committee on Commerce, Industry and Professions

AN Act prohibiting a seller, lessor, creditor, lender or bailee from offering or entering into certain consumer contracts or giving or displaying certain written consumer warranties, notices or signs which are in violation of the rights of consumers and providing for civil ***[damages]*** **penalties** for violations thereof.

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

1 1. This act shall be known and may be cited as the "Truth-in-
2 Consumer Contract, Warranty and Notice Act."

1 2. No seller, lessor, creditor, lender or bailee shall in the course
2 of his business offer to any consumer or prospective consumer or
3 enter into any written consumer contract or give or display any
4 written consumer warranty, notice or sign after the effective date
5 of this act which includes any provision that violates any clearly
6 established legal right of a consumer or responsibility of a seller,
7 lessor, creditor, lender or bailee as established by State or Federal
8 law at the time the offer is made or the consumer contract is signed
9 or the warranty, notice or sign is given or displayed. Consumer
10 means any individual who buys, leases, borrows, or bails any
11 money, property or service which is primarily for personal, family
12 or household purposes. The provisions of this act shall not apply
13 to **residential** leases ***[provided for in "The Truth-in-Renting**
14 **Act" (P. L. 1975, c. 310; C. 46:8-43 et seq.)]***.

1 3. No consumer contract, warranty, notice or sign, as provided
2 for in this act, shall contain any provision by which the consumer
3 waives his rights under this act. Any such provision shall be null
4 and void. No consumer contract, ***[warranty,]*** notice or sign shall

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

5 state that any of its provisions is or may be void, unenforceable or
6 inapplicable in some jurisdictions without specifying which pro-
7 visions are or are not void, unenforceable or inapplicable within
8 the State of New Jersey*; *provided, however, that this shall not*
9 *apply to warranties*.*

1 4. Any person who violates the provisions of this act shall be
2 liable to the **aggrieved** consumer **[whom he aggrieved or in-*
3 *jured]** for **a** civil **[damages]** **penalty** of not less than
4 \$100.00 **or for actual damages, or both at the election of the*
5 *consumer,** together with reasonable attorney's fees and court costs.
6 This may be recoverable by the consumer in a civil action in a court
7 of competent jurisdiction or as part of a counterclaim by the con-
8 sumer against the seller, lessor, creditor, lender or bailee or assignee
9 of any of the aforesaid, who aggrieved **[or injured]** him. A
10 consumer also shall have the right to petition the court to terminate
11 a contract which violates the provisions of section 2 of this act **and*
12 *the court in its discretion may void the contract*.*

1 5. The rights, remedies and prohibitions accorded by the provi-
2 sions of this act are hereby declared to be in addition to and cumu-
3 lative of any other right, remedy or prohibition accorded by
4 common law, Federal law or statutes of this State, and nothing
5 contained herein shall be construed to deny, abrogate or impair
6 any such common law or statutory right, remedy or prohibition.

1 6. This act shall take effect 30 days after enactment.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1660

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1980

The Assembly Commerce, Industry and Professions Committee statement to Assembly No. 1660 adequately explains the provisions of the bill.

The Senate Labor, Industry and Professions Committee amended the bill to exempt from its provisions the sale of real estate and the construction of new homes subject to the "New Home Warranty and Builders Registration Act" (P. L. 1977, c. 467; C. 46:3B-1 et seq.).

SENATE COMMITTEE AMENDMENT TO
ASSEMBLY, No. 1660
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED DECEMBER 11, 1980

Amend page 1, section 2, line 14, after "et seq.)"]*", insert "or to the sale of real estate, whether improved or not, or to the construction of new homes subject to "The New Home Warranty and Builders' Registration Act," P. L. 1977, c. 467 (C. 46:3B-1 et seq.)".

[SENATE REPRINT]
ASSEMBLY, No. 1660

[OFFICIAL COPY REPRINT]

with Senate committee amendment adopted December 11, 1980

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1980

By Assemblymen BAER, BURSTEIN, VAN WAGNER, HOLLENBECK, SCHWARTZ, Assemblywoman KALIK, Assemblymen COSTELLO, RAND, SCHUCK, JANISZEWSKI, Assemblywoman GLUCK and Assemblyman VISOTCKY

Referred to Committee on Commerce, Industry and Professions

AN ACT prohibiting a seller, lessor, creditor, lender or bailee from offering or entering into certain consumer contracts or giving or displaying certain written consumer warranties, notices or signs which are in violation of the rights of consumers and providing for civil ***[damages]*** **penalties** for violations thereof.

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1 2. No seller, lessor, creditor, lender or bailee shall in the course
2 of his business offer to any consumer or prospective consumer or
3 enter into any written consumer contract or give or display any
4 written consumer warranty, notice or sign after the effective date
5 of this act which includes any provision that violates any clearly
6 established legal right of a consumer or responsibility of a seller,
7 lessor, creditor, lender or bailee as established by State or Federal
8 law at the time the offer is made or the consumer contract is signed
9 or the warranty, notice or sign is given or displayed. Consumer
10 means any individual who buys, leases, borrows, or bails any
11 money, property or service which is primarily for personal, family
12 or household purposes. The provisions of this act shall not apply
13 to **residential** leases ***[provided for in "The Truth-in-Renting**
14 **Act" (P. L. 1975, c. 310; C. 46:8-43 et seq.)]*** ***or to the sale*
15 *of real estate, whether improved or not, or to the construction*
16 *of new homes subject to "The New Home Warranty and Builders'*
17 *Registration Act," P. L. 1977, c. 467 (C. 46:3B-1 et seq.)**.*

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

1 3. No consumer contract, warranty, notice or sign, as provided
2 for in this act, shall contain any provision by which the consumer
3 waives his rights under this act. Any such provision shall be null
4 and void. No consumer contract, ***[warranty,]*** notice or sign shall
5 state that any of its provisions is or may be void, unenforceable or
6 inapplicable in some jurisdictions without specifying which pro-
7 visions are or are not void, unenforceable or inapplicable within
8 the State of New Jersey*; *provided, however, that this shall not*
9 *apply to warranties**.

1 4. Any person who violates the provisions of this act shall be
2 liable to the *aggrieved* consumer ***[whom he aggrieved or in-**
3 **jured]*** for *a* civil ***[damages]*** *penalty* of not less than
4 \$100.00 *or for actual damages, or both at the election of the*
5 *consumer,** together with reasonable attorney's fees and court costs.
6 This may be recoverable by the consumer in a civil action in a court
7 of competent jurisdiction or as part of a counterclaim by the con-
8 sumer against the seller, lessor, creditor, lender or bailee or assignee
9 of any of the aforesaid, who aggrieved ***[or injured]*** him. A
10 consumer also shall have the right to petition the court to terminate
11 a contract which violates the provisions of section 2 of this act *and*
12 *the court in its discretion may void the contract**.

1 5. The rights, remedies and prohibitions accorded by the provi-
2 sions of this act are hereby declared to be in addition to and cumu-
3 lative of any other right, remedy or prohibition accorded by
4 common law, Federal law or statutes of this State, and nothing
5 contained herein shall be construed to deny, abrogate or impair
6 any such common law or statutory right, remedy or prohibition.

1 6. This act shall take effect 30 days after enactment.

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1660

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1980

By Assemblymen BAER, BURSTEIN, VAN WAGNER, HOLLENBECK, SCHWARTZ, Assemblywoman KALIK, Assemblymen COSTELLO, RAND, SCHUCK, JANISZEWSKI, Assemblywoman GLUCK and Assemblyman VISOTCKY

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2 Consumer Contract, Warranty and Notice Act."

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2 of his business offer to any consumer or prospective consumer or
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4 written consumer warranty, notice or sign after the effective date
5 of this act which includes any provision that violates any clearly
6 established legal right of a consumer or responsibility of a seller,
7 lessor, creditor, lender or bailee as established by State or Federal
8 law at the time the offer is made or the consumer contract is signed
9 or the warranty, notice or sign is given or displayed. Consumer
10 means any individual who buys, leases, borrows, or bails any
11 money, property or service which is primarily for personal, family
12 or household purposes. The provisions of this act shall not apply
13 to **residential** leases ***[provided for in "The Truth-in-Renting**
14 **Act" (P. L. 1975, c. 310; C. 46:8-43 et seq.)]*** ***or to the sale*
15 *of real estate, whether improved or not, or to the construction*
16 *of new homes subject to "The New Home Warranty and Builders'*
17 *Registration Act," P. L. 1977, c. 467 (C. 46:3B-1 et seq.)**.*

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8 the State of New Jersey*; *provided, however, that this shall not*
9 *apply to warranties*.*

1 4. Any person who violates the provisions of this act shall be
2 liable to the *aggrieved** consumer ~~["whom he aggrieved or in-~~
3 ~~jured"]~~ for *a** civil ~~["damages"]~~ *penalty** of not less than
4 \$100.00 *or for actual damages, or both at the election of the*
5 *consumer,** together with reasonable attorney's fees and court costs.
6 This may be recoverable by the consumer in a civil action in a court
7 of competent jurisdiction or as part of a counterclaim by the con-
8 sumer against the seller, lessor, creditor, lender or bailee or assignee
9 of any of the aforesaid, who aggrieved ~~["or injured"]~~ him. A
10 consumer also shall have the right to petition the court to terminate
11 a contract which violates the provisions of section 2 of this act *and*
12 *the court in its discretion may void the contract*.*

1 5. The rights, remedies and prohibitions accorded by the provi-
2 sions of this act are hereby declared to be in addition to and cumu-
3 lative of any other right, remedy or prohibition accorded by
4 common law, Federal law or statutes of this State, and nothing
5 contained herein shall be construed to deny, abrogate or impair
6 any such common law or statutory right, remedy or prohibition.

1 6. This act shall take effect 30 days after enactment.

JANUARY 11, 1988

A-1542, sponsored by Assemblyman Elliot Smith (R-Somerset), allowing a municipality to control the operations of traffic lights during off-peak hours (10 p.m. to 6 a.m.), subject to the approval of the Department of Transportation. The bill is intended to help reduce gasoline consumption by streamlining traffic during off-peak periods.

A-1660, sponsored by Assemblyman Byron Baer (D-Bergen), strengthening provisions of the Consumer Fraud Act by prohibiting a seller, creditor or bailor from including in a consumer contract any provision that "violates clearly (the) established legal rights of a consumer."

A-574, sponsored by Assemblyman Clifford Snedeker (R-Mercer), allowing military veterans to purchase credit in the public employee retirement system for up to 5 years of active military service prior to their enrollment in the system.

At present, credit can be purchased for military service that interrupts state service but not for prior military service. The bill also provides that the employers will not be liable for any payment to the retirement system because of any purchase of credit.

A-1385, sponsored by Assemblyman James Bornheimer (D-Middlesex), stiffening penalties for certain violations of the unfair trade practice provisions of the Life and Health Insurance Code and property and casualty insurers. Fines for violations now range from a maximum of \$1,000 for each unknowing violation to a maximum of \$5,000 for each knowing violation..

A-3506, sponsored by Assemblyman Thomas Gallo (D-Hudson), changes the experience and educational requirements of a mine safety section chief, safety engineer and safety inspector. The bill removes a requirement that a section chief or engineer have experience in underground mining since there are few such mines operating in New Jersey.

A-1491, sponsored by Assemblyman James Zangari (D-Essex), enabling the Division of Taxation to credit refunds from an individual's unemployment and temporary disability insurance accounts to that individual's state income tax liability.

- 1 2. Section 4 of P. L. 1952, c. 179 (C. 17:9A-23.4) is amended
- 2 to read as follows: