

ASSEMBLY, No. 4044
STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JULY 21, 2016

Sponsored by:

Assemblyman LOUIS D. GREENWALD
District 6 (Burlington and Camden)

SYNOPSIS

Prohibits non-disclosure clauses in certain contracts.

CURRENT VERSION OF TEXT

As introduced.

An Act prohibiting non-disclosure clauses in certain contracts, supplementing P.L.1981, c.454 (C.56:12-14 et seq.), and amending and supplementing P.L.1988, c.123.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) a. Notwithstanding the provisions of P.L.1981, c.454 (C.56:12-14 et seq.) or any other law to the contrary, and in addition to any other remedy available under law, a consumer contract for the purchase, lease or repair of a motor vehicle shall not contain any provision which waives a consumer's right to make any statement, or penalizes a consumer for making any statement, including a statement posted on the Internet, regarding the manufacturer, seller or lessor of the motor vehicle, or its employees or agents, or concerning any goods or services rendered pursuant to the contract.

b. If the Attorney General determines that a manufacturer, seller or lessor is in violation of this section, the Attorney General may impose upon that manufacturer, seller or lessor a civil penalty in an amount up to \$5,000 for the first violation and up to \$10,000 for each and every subsequent violation, collectible in an action brought in the name of the Attorney General pursuant to the provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. In addition to the penalties described in subsection b. of this section, or any other remedy available under law, any person aggrieved by a violation of this section may bring an action in Superior Court to recover damages.

2. Section 20 of P.L.1988, c.123 (C.56:12-48) is amended to read as follows:

20. Any agreement entered into by a consumer for the purchase or lease of a new motor vehicle , or subsequent repair of a nonconformity in relation thereto, which waives, limits or disclaims the rights set forth in [this act] P.L.1988, c.123 (C.56:12-29 et seq.), or which penalizes a consumer for making any statement, including a statement posted on the Internet, regarding the manufacturer, dealer or lessor of the new motor vehicle, or its employees or agents, or concerning any goods or services rendered pursuant to the agreement, shall be void as contrary to public policy.

(cf P.L.1988, c.123, s.20)

3. (New section) a. Notwithstanding the provisions of P.L.1988, c.123 (C.56:12-29 et seq.) or any other law to the contrary, and in addition to any other remedy available under law, an agreement for the purchase or lease of a new motor vehicle, or subsequent repair of a nonconformity in relation thereto, shall not contain any provision which waives a consumer's right to make any statement, or penalizes a consumer for making any statement, including a statement posted on the Internet, regarding the manufacturer, dealer or lessor of the motor vehicle, or its employees or agents, or concerning any goods or services rendered pursuant to the agreement.

b. If the Attorney General determines that a manufacturer, dealer or lessor is in violation of this section, the Attorney General may impose upon that manufacturer, dealer or lessor a civil penalty in an amount up to \$5,000 for the first violation and up to \$10,000 for each and every subsequent violation, collectible in an action brought in the name of the Attorney General pursuant to the provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. In addition to the penalties described in subsection b. of this section, or any other remedy available under law, any person aggrieved by a violation of this section may bring an action in Superior Court to recover damages.

4. This act shall take effect on the 90th day next following enactment and the provisions of this act shall not apply to any contract or agreement first entered into prior to the effective date of this act.

STATEMENT

In a contract for the sale, lease or repair of a motor vehicle, this bill prohibits the use of a non-disclosure clause. For the purposes of this bill, a non-disclosure clause is a provision in a contract which imposes a fee or other consequence on a consumer for a negative review or other statement regarding the motor vehicle, the manufacturer, the seller or the lessor.

Though non-disclosure agreements are rarely incorporated into contracts for the sale or repair of a motor vehicle, recent press reports indicate that the use of such agreements is on the rise, in some cases leading consumers to believe that they will be in violation of the clause if they report safety issues to the National Highway Traffic Safety Administration. Additionally, such clauses prevent consumers from sharing valuable product

information with others, thereby diminishing the accountability of the business imposing the prohibition.

This bill prohibits any provision in a consumer contract for the purchase, lease or repair of a motor vehicle which waives a consumer's right to make any statement, or penalizes a consumer for making any statement, including a statement posted on the Internet, regarding the manufacturer, seller or lessor, or its employees or agents, or concerning the goods or services rendered.

For violations of this prohibition, the bill grants authority to the Attorney General to impose a civil penalty of up to \$5,000 for a first offense, and up to \$10,000 for each subsequent offense. It also creates a private cause of action for aggrieved parties.

The bill supplements P.L.1981, c.454 (C.56:12-14 et seq.), and as such, would apply to all consumer contracts for the purchase, lease or repair of any motor vehicle. The bill also amends and supplements P.L.1988, c.123 (C.56:12-29 et seq.), commonly known as the "Lemon Law," and would thus also apply the prohibition on non-disclosure clauses to the purchase or lease of a new motor vehicle and any repairs made in relation thereto for a defect or condition which substantially impairs the use, value or safety of that motor vehicle.