ASSEMBLY, No. 1491

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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District 4 (Camden and Gloucester)
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SYNOPSIS

Requires retail companies that subcontract work or services to provide certain notifications to consumers; makes these companies liable to consumers for certain damages.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning subcontracts 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:*

1. a. As used in this section, "retail mercantile establishment" means any place of business where merchandise is exposed or offered for sale at retail to members of the consuming public and that uses a subcontractor to perform any of the work or services for which the retail mercantile establishment has entered into a contract with a consumer.

b. A retail mercantile establishment shall provide to the consumer, prior to the signing of the contract, written notification of the use of a subcontractor and, if appropriate, written notification of the use of a sub-subcontractor by the subcontractor. The notification also shall contain the type and amount of insurance coverage held by the subcontractor and, if appropriate, the sub-subcontractor.

The written notification shall be on a form that is separate from the contract for the work or services and shall be signed by the consumer as evidence that the consumer has received the notification.

c. A retail mercantile establishment shall include in the contract with the consumer a clear and conspicuous statement informing the consumer who is responsible for the performance of the contract.

d. A retail mercantile establishment shall be liable to the consumer for all damages arising out of the performance of the contract, including those caused by a subcontractor or a sub-subcontractor. This provision shall not be construed to prohibit a retail mercantile establishment from recovering any damages paid to a consumer from a subcontractor hired by the retail mercantile establishment or from a sub-subcontractor hired by the subcontractor.

e. A retail mercantile establishment that violates this section shall be subject to a civil penalty of $2,500 for a first violation and $5,000 for any subsequent violation, which may be collected and enforced by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section. A violation of this section shall not be considered an unlawful practice in violation of P.L.1960, c.39 (C.56:8-1 et seq.).

2. This act shall take effect immediately.

STATEMENT

This bill requires retail companies that subcontract work or services to provide certain notifications to consumers and makes the companies liable to the consumer for certain damages.

Under the provisions of the bill, a retail mercantile establishment is required to provide written notification to the consumer, prior to the signing of the contract, of the use of a subcontractor and, if appropriate, written notification of the use of a sub-subcontractor by the subcontractor. The notification is also required to contain the type and amount of insurance coverage held by the subcontractor and, if appropriate, the sub-subcontractor. The written notification is required to be on a form that is separate from the contract for the work or services and is to be signed by the consumer as evidence that the consumer has received the notification. In addition, the bill requires a retail mercantile establishment to include in the contract with the consumer a clear and conspicuous statement informing the consumer who is responsible for the performance of the contract.

The bill also provides that a retail mercantile establishment is liable to the consumer for all damages arising out of the performance of the contract, including those caused by a subcontractor or a sub-subcontractor. However, this provision is not to be construed to prohibit a retail mercantile establishment from recovering any damages paid to a consumer from a subcontractor hired by the retail mercantile establishment or from a sub-subcontractor hired by the subcontractor.

The bill defines a “retail mercantile establishment” as any place of business where merchandise is exposed or offered for sale at retail to members of the consuming public and that uses a subcontractor to perform any of the work or services for which the retail mercantile establishment has entered into a contract with a consumer.

Under the bill, a retail mercantile establishment that violates the provisions of the bill is subject to a civil penalty of $2,500 for a first violation and $5,000 for any subsequent violation. However, a violation is not to be considered an unlawful practice under the consumer fraud act.