

ASSEMBLY BILL NO. 2685

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am herewith returning Assembly Bill No. 2685 with my recommendations for reconsideration.

Assembly Bill No. 2685 amends a provision of the New Jersey Consumer Fraud Act (the "Act") that shields licensed real estate brokers, broker-salespersons, and salespersons ("real estate licensees") from possible civil liability under the Act for communicating false, misleading, or deceptive information that was provided by or on behalf of a property seller. See N.J.S. 56:8-19.1. For this immunity provision to apply, the real estate licensee must, among other things, have obtained a property condition disclosure statement from the seller and communicated the information in the statement to the buyer. N.J.S. 56:8-19.1(b)(3). Assembly Bill No. 2685 supplements this provision by adding language directing the Director of the Division of Consumer Affairs ("Director" and "Division") in the Department of Law and Public Safety to require real estate licensees to refer buyers to the "Mold Guidelines for New Jersey Residents" published by the Department of Health ("DOH") - or other guidelines deemed appropriate by the Director - when a property condition disclosure statement indicates a seller is aware of "water leakage, accumulation or dampness, the presence of mold or other similar natural substance, or repairs or other attempts to control any water or dampness problem on the real property."

I commend the sponsors of Assembly Bill No. 2685 for their efforts to ensure that buyers of property with known water-related issues are provided with the opportunity to learn about the dangers of mold and the steps that should be taken to identify and address them. But the approach taken in the bill - mandating the Director

to require real estate licensees to refer buyers to the appropriate informative materials - is unlikely to be an optimal means to ensure compliance. Significantly, the Division does not have regulatory authority over real estate licensees, and this legislation does not confer such authority. The protection from civil liability under the Act, however, does provide substantial incentive. Accordingly, this bill would be more effective if it were amended to condition the immunity provided to real estate licensees under N.J.S. 56:8-19.1 upon their compliance with the mold information referral requirement established under the bill, instead of imposing an affirmative requirement upon the Director that the Division lacks the authority to enforce. This alternate approach will meet the sponsors' goal of more effectively educating vulnerable property buyers about the dangers of mold by providing a robust, meaningful incentive to protect compliant real estate licensees from financial exposure where they might otherwise be held culpable under the Act.

The suggested amendments also incorporate recent changes made to the statute pursuant to laws that were enacted late last year.

Therefore, I herewith return Assembly Bill No. 2685 and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 10:</u>	After "recovery" delete "of"
<u>Page 2, Section 1, Line 11:</u>	Delete in its entirety
<u>Page 2, Section 1, Line 12:</u>	Delete "P.L.1971, c.247 (C.56:8-19),"
<u>Page 2, Section 1, Line 16:</u>	Delete "by or on behalf of the seller of" and insert "regarding"
<u>Page 2, Section 1, Line 18:</u>	Delete "he" and insert "they"
<u>Page 2, Section 1, Line 20:</u>	Delete "and"
<u>Page 3, Section 1, Line 2:</u>	Delete "The director shall require that if" and insert "In addition to any other question as the director shall deem necessary, the property condition disclosure statement shall include a question specifically concerning the"

presence of lead plumbing, including but not limited to any service line, piping materials, fixtures, and solder, in the residential property; and
c. If"

Page 3, Section 1, Line 3:

Delete "contains" and insert "contained"

Page 3, Section 1, Line 8:

Delete "shall refer" and insert "referred"

Page 3, Section 1, Line 11:

Delete ". If" and insert "and, if"

Page 3, Section 1, Lines 11-12:

Delete "the real estate broker, broker-salesperson, or salesperson shall provide" and insert "provided"

Page 3, Section 1, Line 19:

Delete "(cf: P.L.2004, c.18, s.2)" and insert "(cf: P.L.2021, c.268)"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor