

SENATE, No. 1578

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Concerns certain actions brought under “Truth-in-Consumer Contract, Warranty and Notice Act.”

CURRENT VERSION OF TEXT

As introduced.



S1578 BEACH

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1 AN ACT concerning certain consumer fraud actions and amending
2 P.L.1981, c.454.

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

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7 1. Section 4 of P.L.1981, c.454 (C.56:12-17) is amended to
8 read as follows:

9 4. a. Any person who violates the provisions of **[this act]**
10 P.L.1981, c.454 (C.56:12-14 et seq.) shall be liable to the aggrieved
11 consumer for a civil penalty of not less than \$100.00 or for actual
12 damages, or both at the election of the consumer, together with
13 reasonable attorney's fees and court costs. This may be recoverable
14 by the consumer in a civil action in a court of competent
15 jurisdiction or as part of a counterclaim by the consumer against the
16 seller, lessor, creditor, lender or bailee or assignee of any of the
17 aforesaid, who aggrieved him. A consumer also shall have the right
18 to petition the court to terminate a contract which violates the
19 provisions of section 2 of **[this act]** P.L.1981, c.454 (C.56:12-15)
20 and the court in its discretion may void the contract.

21 b. No class certification shall be granted for any alleged
22 violation of P.L.1981, c.454 (C.56:12-14 et seq.) in the absence of
23 an ascertainable economic loss resulting from the alleged violation.

24 c. (1) Prior to the commencement of an action pursuant to this
25 section, an aggrieved consumer whose economic loss is \$250 or less
26 shall first request reimbursement from the seller, lessor, creditor,
27 lender or bailee or assignee of any of the aforesaid, as applicable.
28 Any request for reimbursement made pursuant to this subsection
29 shall be in writing and sent via certified mail, return receipt
30 requested, and by regular mail. No action pursuant to this
31 subsection shall be brought until the 35th day following the mailing
32 of the request for reimbursement.

33 (2) In an action brought by a consumer pursuant to this section
34 that is first asserted as a counterclaim, the reimbursement request
35 requirements of paragraph (1) of this subsection, if applicable, shall
36 be satisfied if the consumer's pleading states the nature of the
37 counterclaim and the amount of the economic loss. The party who
38 has been served with the counterclaim pleading and who disputes
39 the economic loss stated therein may tender the full amount of the
40 claimed loss to the court or to the attorney for either party, to be
41 held in escrow pending the outcome of the case. If that party
42 chooses to do so, then attorney's fees shall not be awarded if the
43 consumer's counterclaim prevails.

44 (cf: P.L.1981, c.454, s.4)

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

Matter underlined thus is new matter.

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill amends the “Truth-in-Consumer Contract, Warranty
7 and Notice Act,” (TCCWNA) P.L.1981, c.454 (C.56:12-14 et seq.),
8 by requiring aggrieved consumers to have suffered an ascertainable
9 economic loss in order to commence a class-action lawsuit for
10 violation of the TCCWNA. The bill further provides that a
11 consumer who suffers an economic loss of \$250 or less as a result
12 of a violation of the TCCWNA must first request reimbursement for
13 the loss prior to the commencement of a legal action.

14 Pursuant to this bill, a request for reimbursement for an
15 economic loss must be made in writing and sent via certified mail,
16 return receipt requested, and by regular mail. The bill provides that
17 no action shall be filed until the 35th day following the mailing of
18 the request for reimbursement.

19 In addition, an action brought pursuant to the TCCWNA that is
20 first asserted by a consumer as a counterclaim shall satisfy the
21 reimbursement request requirement if the consumer asserts in the
22 pleading the nature of the counterclaim and the economic loss in the
23 amount of \$250 or less. A party who has been served with the
24 counterclaim pleading, and who disputes the economic loss stated
25 therein, may choose to tender the full amount of the claimed loss to
26 the court or to the attorney for either party to be held in escrow
27 pending the outcome of the case. Should that party choose to do so,
28 attorney’s fees shall not be awarded if the consumer’s counterclaim
29 prevails.

30 A consumer whose economic loss exceeds \$250 may take legal
31 action under the TCCWNA without first requesting reimbursement.