



NEW JERSEY ASSOCIATION *for* JUSTICE^{Inc.}

Position Statement
S-2740/A-4292
2018-2019 Legislative Session

Limits the legal rights of consumers under the New Jersey Consumer Fraud Act

The New Jersey Association for Justice strongly opposes S-2740/A-4292. This bill strips consumers of the protections of the New Jersey Consumer Fraud Act when they are buying or repairing a vehicle. The bill is unfair to the consumer as it grants de facto immunity to car dealers and makes it economically impossible for a defrauded consumer to hire an attorney against a car dealer.

The purchase of a vehicle is often the most expensive purchase many consumers make. It is unfair to remove the protective rights of the Consumer Fraud Act from consumers buying or repairing cars. Though parts of the bill concern an auto dealer's obligation to notify potential buyers about recalls; we are vehemently opposed to parts of the Bill, as presently written, that provide unprecedented limitation on damages and attorney's fees that would apply to any fraudulent conduct by an auto dealer.

The New Jersey Consumer Fraud Act is designed to encourage private attorneys to act as enforcement agents to deter fraudulent actions at all economic levels. It is a model statute, envied around the country. For decades, attorney's fees for a successful claimant under the New Jersey Consumer Fraud Act have been awarded based on the work actually performed by the attorney.

Under S-2740/A-4292, a victim's attorney may need to work for years to prove the case, only to have the fees limited to a percentage of a repair cost. The New Jersey Consumer Fraud Act cannot fulfill its public policy role of punishing and deterring anti-consumer practices when it is not economically viable for skilled attorneys to take on the cases.

S-2740/A-4292 amends the New Jersey Consumer Fraud Act attorney fee and damages provisions and in the process provides de facto immunity to automobile dealers. This leaves consumers entirely without a legal remedy if they are cheated or defrauded. This bill eliminates a consumer's chance of ever retaining an attorney, and stands decades of precedent on its head.

Section 2 harms consumers in several significant ways:

First, the word "egregious" is inserted; a requirement which presently does not exist in the Act or the decades of case law interpreting the Act. The use of this word would require plaintiffs to prove a level of intent which has never been part of their burden. This unjustified standard would give car dealers the chance to claim "innocent mistake" as a defense, notwithstanding consumer harm as a result of the dealers' actions. Even if the dealer had intent to deceive, requiring a victim of that deception to prove the dealer's actions were "egregious" would allow dealers to avoid accountability for even knowingly deceptive practices, as long as the harm wasn't "egregious."

Secondly, the Bill suggests that prevailing plaintiffs may receive threefold damages, instead of “shall.” Presently, the state of the law for unconscionable commercial practices which cause harm is that threefold damages shall be awarded; the Court does not have discretion not to do so. Threefold damages are an incentive for dealers not to continue deceptive practices. To render them discretionary introduces a random element of judicial discretion which would create inconsistent enforcement of the CFA.

Thirdly, this subsection again substitutes the word “may” for “shall,” when it comes to reasonable attorney fees for prevailing plaintiffs in CFA suits. Again, this creates inconsistency and erodes the efficacy of the private enforcement which has been the hallmark and strength of the Act for decades.

Finally, S-2740/A-4292 limits fees to thirty percent of plaintiff’s recovery. This has the effect of ensuring that no attorney will ever be able to afford to help victims of such practices. The limitations on damages and fees, and the alterations of the standards for obtaining them – which are inconsistent with how the Act deals with fees.

No sector of the economy deserves special immunity from the consequences of its fraud upon the public.

We urge you to protect the legal rights of New Jersey consumers and vote ‘NO’ on S-2740/A-4292.

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The New Jersey Association for Justice was founded in the 1940s as the Association of Trial Lawyers of America-New Jersey. NJAJ is a statewide association of trial attorneys dedicated to protecting people’s rights by working to strengthen the laws for safer products and workplaces, a cleaner environment and quality health care and preserving justice for all.

New Jersey Association for Justice

150 West State Street

Trenton, NJ 08608

609-396-0096

www.nj-justice.org

Lynne M. Kizis, Esq., President

Deborah R. Bozarth, Director of Governmental Relations