

# ASSEMBLY, No. 4044

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JULY 21, 2016

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Senator COLIN BELL**

**District 2 (Atlantic)**

**SYNOPSIS**

Prohibits non-disclosure clauses in certain contracts.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT prohibiting non-disclosure clauses in certain contracts,  
2 supplementing P.L.1981, c.454 (C.56:12-14 et seq.), and  
3 amending and supplementing P.L.1988, c.123.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

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

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

26 c. In addition to the penalties described in subsection b. of this  
27 section, or any other remedy available under law, any person  
28 aggrieved by a violation of this section may bring an action in  
29 Superior Court to recover damages.  
30

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

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

43 (cf: P.L.1988, c.123, s.20)  
44

45 3. (New section) a. Notwithstanding the provisions of  
46 P.L.1988, c.123 (C.56:12-29 et seq.) or any other law to the

**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 contrary, and in addition to any other remedy available under law,  
2 an agreement for the purchase or lease of a new motor vehicle, or  
3 subsequent repair of a nonconformity in relation thereto, shall not  
4 contain any provision which waives a consumer's right to make any  
5 statement, or penalizes a consumer for making any statement,  
6 including a statement posted on the Internet, regarding the  
7 manufacturer, dealer or lessor of the motor vehicle, or its employees  
8 or agents, or concerning any goods or services rendered pursuant to  
9 the agreement.

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

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

22

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

27

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#### STATEMENT

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

36 Though non-disclosure agreements are rarely incorporated into  
37 contracts for the sale or repair of a motor vehicle, recent press  
38 reports indicate that the use of such agreements is on the rise, in  
39 some cases leading consumers to believe that they will be in  
40 violation of the clause if they report safety issues to the National  
41 Highway Traffic Safety Administration. Additionally, such clauses  
42 prevent consumers from sharing valuable product information with  
43 others, thereby diminishing the accountability of the business  
44 imposing the prohibition.

45 This bill prohibits any provision in a consumer contract for the  
46 purchase, lease or repair of a motor vehicle which waives a  
47 consumer's right to make any statement, or penalizes a consumer  
48 for making any statement, including a statement posted on the

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1 Internet, regarding the manufacturer, seller or lessor, or its  
2 employees or agents, or concerning the goods or services rendered.

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

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