

ASSEMBLY, No. 1520

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1996

By Assemblymen IMPREVEDUTO and KELLY

1 AN ACT concerning certain consumer contracts and services, and
2 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

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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. As used in this act:

8 "Cable television company" or "CATV company" means any person
9 owning, controlling, operating or managing a cable television system
10 and includes any agency or instrumentality of the State or any of its
11 political subdivisions, but does not include a telephone, telegraph or
12 electric company utility regulated by the Board of Public Utilities if the
13 utility only leases or rents or otherwise provides to a CATV company
14 wire conduits, cable or pole space used in the redistribution of
15 television signals to or toward subscribers or customers of that CATV
16 company.

17 "Consumer" means a natural person who purchases merchandise
18 from a retailer or services from a public utility or cable television
19 company for personal, family or household purposes.

20 "Consumer contract" means a written agreement in which an
21 individual contracts for merchandise or for services for cash or on
22 credit and the merchandise or services are obtained for personal,
23 family or household purposes. "Consumer contract" includes writings
24 required to complete the consumer transaction.

25 "Merchandise" means any objects, wares, goods, commodities or
26 other tangible items offered, directly or indirectly, to consumers for
27 sale.

28 "Public utility" or "utility" shall include every individual,
29 copartnership, association, corporation or joint stock company, their
30 lessees, trustees or receivers appointed by any court whatsoever, their
31 successors, heirs or assigns, that now or hereafter may own, operate,
32 manage or control within this State any pipeline, gas, electric light,
33 heat, power, water, oil, sewer, solid waste collection, solid waste
34 disposal, telephone or telegraph system, plant or equipment for public
35 use, under privileges granted or hereafter to be granted by this State
36 or by any political subdivision thereof.

37 "Retailer" means a person who engages in the business of selling

1 merchandise as herein defined for cash or on credit at retail to
2 consumers.

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4 2. a. Whenever a consumer contract is entered into between a
5 consumer and a retailer relating to the sale of merchandise which is to
6 be delivered by the retailer or the retailer's agent to the consumer at a
7 later date, and the parties have agreed that the presence of the
8 consumer is required at the time of delivery, the retailer shall inform
9 the consumer, either at the time of the sale or at a later date of the
10 consumer's right to receive delivery within either a morning, or a.m.,
11 timeframe period or an afternoon, or p.m., timeframe period and shall
12 specify the time for the delivery after offering the consumer either the
13 a.m. or p.m. timeframe period at the time the consumer requests the
14 delivery if the consumer so requests. Once a delivery time is
15 established, the retailer or the retailer's agent shall deliver the
16 merchandise to the consumer within the agreed upon a.m. or p.m.
17 timeframe period.

18 b. If the merchandise is not delivered within the specified a.m. or
19 p.m. timeframe period, except for delays caused by unforeseen or
20 unavoidable occurrences beyond the control of the retailer, the
21 consumer may bring an action in the Superior Court, Law Division,
22 Special Civil Part, against the retailer for lost wages, expenses actually
23 incurred, or other actual damages not exceeding a total of \$500.

24 c. No action shall be considered valid if the consumer was not
25 present at the time, within the specified period, when the retailer or the
26 retailer's agent attempted to make the delivery or made a diligent
27 attempt to notify the consumer of its inability to do so because of
28 unforeseen or unavoidable occurrences beyond its control.

29 d. In any legal action pursuant to subsection b. of this section, logs
30 and other business records maintained by the retailer or the retailer's
31 agent in the ordinary course of business shall be prima facie evidence
32 of the time period specified for the delivery and of the time when the
33 merchandise was delivered, or of a diligent attempt by the retailer or
34 the retailer's agent to notify the consumer of delay caused by
35 unforeseen or unavoidable occurrences.

36 e. It shall be a defense to the action if a diligent attempt was made
37 to notify the consumer of the delay caused by unforeseen or
38 unavoidable occurrences beyond the control of the retailer or the
39 retailer's agent, or the retailer or the retailer's agent was unable to
40 notify the consumer of the delay because of the consumer's absence or
41 unavailability during the agreed upon a.m. or p.m. timeframe period,
42 and in either instance, the retailer or the retailer's agent makes the
43 delivery within two hours of a newly agreed upon a.m. or p.m.
44 timeframe period or if the consumer unreasonably declines to arrange
45 a new delivery time.

1 3. a. Cable television companies shall inform their subscribers of
2 their right to service connection or repair within either a morning, or
3 a.m., timeframe period or an afternoon, or p.m., timeframe period, if
4 the presence of the subscriber is required, by offering the subscriber
5 either the a.m., or p.m. timeframe period at the time the subscriber
6 calls for service connection or repair, or by notifying the subscriber by
7 mail annually of this service. Whenever a subscriber contracts with a
8 CATV company for a service connection or repair, and the parties
9 have agreed that the presence of the subscriber is required, the CATV
10 company shall specify the time for the commencement of the service
11 connection or repair within the agreed upon a.m. or p.m. timeframe
12 period if the subscriber requests.

13 b. If the service connection or repair is not commenced within the
14 specified a.m. or p.m. timeframe period, except for delays caused by
15 unforeseen or unavoidable occurrences beyond the control of the
16 CATV company, the subscriber may bring an action in the Superior
17 Court, Law Division, Special Civil Part, against the CATV company
18 for lost wages, expenses actually incurred or other actual damages not
19 exceeding a total of \$500.

20 c. No action shall be considered valid if the subscriber was not
21 present at the time, within the specified period, that the CATV
22 company attempted to make the service connection or repair.

23 d. In any legal action pursuant to subsection b. of this section, logs
24 and other business records maintained by the CATV company or its
25 agent in the ordinary course of business shall be prima facie evidence
26 of the time period specified for the commencement of the service
27 connection or repair and the time that the CATV company or its
28 agents attempted to make the service connection or repair, or of a
29 diligent attempt by the CATV company to notify the subscriber of a
30 delay caused by unforeseen or unavoidable occurrences.

31 e. It shall be a defense to the action if a diligent attempt was made
32 to notify the subscriber of delay caused by unforeseen or unavoidable
33 occurrences beyond the control of the CATV company or its agent, or
34 the CATV company or its agents was unable to notify the subscriber
35 because of the subscriber's absence or unavailability during the agreed
36 upon a.m. or p.m. timeframe period and in either case, the CATV
37 company commenced service or repairs within a newly agreed upon
38 a.m. or p.m. timeframe period.

39 f. No action shall be considered valid against a CATV company
40 pursuant to this section when the franchise or any local ordinance
41 provides the subscriber with a remedy for a delay in commencement
42 of a service connection or repair and the subscriber has elected to
43 pursue that remedy. If a subscriber elects to pursue such a remedy
44 against a CATV company under this section, the franchising or State
45 or local licensing authority shall be barred from imposing any fine,
46 penalty, or other sanction against the company, arising out of the same

1 incident.

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3 4. a. Public utilities shall inform their subscribers of their right to
4 service connection or repair within either a morning, or a.m.,
5 timeframe period or an afternoon, or p.m., timeframe period, if the
6 presence of the subscriber is required by offering the subscriber either
7 the a.m. or p.m. timeframe period at the time the subscriber calls for
8 service connection or repair or by notifying the subscriber by mail
9 three times a year of this service. Whenever a subscriber contracts
10 with the utility for a service connection or repair and the parties have
11 agreed that the presence of the subscriber is required, the utility shall
12 specify the time for the commencement of the service connection or
13 repair within the agreed upon a.m. or p.m. timeframe period if the
14 subscriber requests.

15 b. If the service connection or repair is not commenced within the
16 specified a.m. or p.m. timeframe period, except for delays caused by
17 unforeseen or unavoidable circumstances beyond the control of the
18 company, the subscriber may bring an action in Superior Court, Law
19 Division, Special Civil Part, against the utility for lost wages, expenses
20 actually incurred, or other actual damages not exceeding a total of
21 \$500.

22 c. No action shall be considered valid if the subscriber was not
23 present at the time, within the specified period, that the utility
24 attempted to make the service connection or repair.

25 In addition, no action shall be considered valid if, in the case of a
26 telephone installation, the subscriber fails, at the time the installation
27 is contracted for, to provide the utility with a phone number where the
28 subscriber may be contacted within the specified period agreed upon
29 for the installation of the telephone.

30 d. In any legal action pursuant to subsection b. of this section, logs
31 and other business records maintained by the utility or its agents in the
32 ordinary course of business shall be prima facie evidence of the time
33 period specified for the commencement of the service connection or
34 repair and of the time that the utility attempted to make the service
35 connection or repair, or of a diligent attempt by a utility to notify the
36 subscriber of delay caused by unforeseen or unavoidable occurrences.

37 e. It shall be a defense to the action if a diligent attempt was made
38 by the utility to notify the subscriber of delay caused by unforeseen or
39 unavoidable occurrences beyond the control of the utility, and the
40 utility commenced service within a newly agreed upon a.m. or p.m.
41 timeframe period.

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43 5. This act shall take effect on the first day of the second month
44 after enactment.

1 STATEMENT

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4 This bill requires retailers who sell merchandise which is to be
5 delivered at a later date to specify to the purchaser, if the purchaser is
6 required to be present at the time of the delivery, that he has the right
7 to receive delivery within either a morning or an afternoon time
8 period. Each retailer is to offer the purchaser that option at the time
9 that the purchaser requests the delivery. If the retailer fails to deliver
10 the merchandise within the specified period, this bill permits the
11 purchaser to sue the retailer in small claims court for up to \$500 in lost
wages or actual damages.

12 Under the provisions of the bill, it is a defense to any such action if
13 the retailer makes a diligent attempt to notify the purchaser of a delay
14 in delivery caused by unforeseen circumstances, or if the retailer or his
15 agent was unable to notify the purchaser of the delay because the
16 purchaser was absent or unavailable during the specified delivery
17 period, or, in either instance, the retailer or his agent makes the
18 delivery within two hours of a newly agreed upon a.m. or p.m.
19 timeframe or the purchaser unreasonably refuses to agree to a new
20 delivery time.

21 The bill provides a similar remedy against cable television
22 companies which fail to deliver connection or repair services within a
23 specified a.m., or p.m., timeframe period.

24 The bill also provides that public utilities and cable television
25 companies are to inform their subscribers of their right to service
26 connection or repair within either a morning or an afternoon time
27 period, if it is necessary that the subscriber be present at the time
28 services are rendered. Public utilities covered under this bill include
29 entities that manage or control within this State any pipeline, gas,
30 electric light, heat, power, water, oil, sewer, solid waste collection,
31 solid waste disposal, telephone or telegraph system. Each utility is to
32 offer the subscriber either the morning or afternoon time period at the
33 time the subscriber calls for service connection or repair, or may notify
34 the subscriber by mail three times a year of this service. In the case of
35 a cable television company, each such company is to offer the
36 subscriber either the morning or afternoon time period at the time the
37 subscriber calls for service connection or repair, or may notify the
38 subscriber by mail annually of this service.

39 In addition, the bill establishes that a subscriber contracting for a
40 telephone installation is required to provide the utility with a phone
41 number where the subscriber may be contacted during the time period
42 when the installation is scheduled to take place. The bill provides that
43 in the case of a telephone installation, no ensuing legal action shall be
44 considered valid if, at the time the installation was contracted for, the
45 subscriber failed to provide the utility with a phone number where he
46 could be contacted within the specified period agreed upon for the

1 installation of the telephone.

2 It shall be a defense to the action if a diligent attempt was made by
3 the utility to notify the subscriber of delay caused by unforeseen or
4 unavoidable occurrences beyond the control of the utility, and the
5 utility commenced service within a newly agreed upon morning or
6 afternoon time period.

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11 Provides consumer remedy for failure to deliver merchandise or
12 service at time promised.