

[First Reprint]

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 <sup>1</sup>[P.L.1960, c.39 (C.56:8-1 et seq.)] Title 56 of the  
3 Revised Statutes<sup>1</sup>.

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

7  
8 1. As used in this act:

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

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

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

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

29 "Public utility" or "utility" shall include every individual,  
30 copartnership, association, corporation or joint stock company, their  
31 lessees, trustees or receivers appointed by any court whatsoever, their

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ACP committee amendments adopted February 22, 1996.

1 successors, heirs or assigns, that now or hereafter may own, operate,  
2 manage or control within this State any pipeline, gas, electric light,  
3 heat, power, water, oil, sewer, solid waste collection, solid waste  
4 disposal, telephone or telegraph system, plant or equipment for public  
5 use, under privileges granted or hereafter to be granted by this State  
6 or by any political subdivision thereof.

7 "Retailer" means a person who engages in the business of selling  
8 merchandise as herein defined for cash or on credit at retail to  
9 consumers.

10

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

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

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

36 d. In any legal action pursuant to subsection b. of this section, logs  
37 and other business records maintained by the retailer or the retailer's  
38 agent in the ordinary course of business shall be prima facie evidence  
39 of the time period specified for the delivery and of the time when the  
40 merchandise was delivered, or of a diligent attempt by the retailer or  
41 the retailer's agent to notify the consumer of delay caused by  
42 unforeseen or unavoidable occurrences.

43 e. It shall be a defense to the action if a diligent attempt was made  
44 to notify the consumer of the delay caused by unforeseen or  
45 unavoidable occurrences beyond the control of the retailer or the  
46 retailer's agent, or the retailer or the retailer's agent was unable to

1 notify the consumer of the delay because of the consumer's absence or  
2 unavailability during the agreed upon a.m. or p.m. timeframe period,  
3 and in either instance, the retailer or the retailer's agent makes the  
4 delivery within two hours of a newly agreed upon a.m. or p.m.  
5 timeframe period or if the consumer unreasonably declines to arrange  
6 a new delivery time.

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

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

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

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

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

46 f. No action shall be considered valid against a CATV company

1 pursuant to this section when the franchise or any local ordinance  
2 provides the subscriber with a remedy for a delay in commencement  
3 of a service connection or repair and the subscriber has elected to  
4 pursue that remedy. If a subscriber elects to pursue such a remedy  
5 against a CATV company under this section, the franchising or State  
6 or local licensing authority shall be barred from imposing any fine,  
7 penalty, or other sanction against the company, arising out of the same  
8 incident.

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

22 b. If the service connection or repair is not commenced within the  
23 specified a.m. or p.m. timeframe period, except for delays caused by  
24 unforeseen or unavoidable circumstances beyond the control of the  
25 company, the subscriber may bring an action in Superior Court, Law  
26 Division, Special Civil Part, against the utility for lost wages, expenses  
27 actually incurred, or other actual damages not exceeding a total of  
28 \$500.

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

32 In addition, no action shall be considered valid if, in the case of a  
33 telephone installation, the subscriber fails, at the time the installation  
34 is contracted for, to provide the utility with a phone number where the  
35 subscriber may be contacted within the specified period agreed upon  
36 for the installation of the telephone.

37 d. In any legal action pursuant to subsection b. of this section, logs  
38 and other business records maintained by the utility or its agents in the  
39 ordinary course of business shall be prima facie evidence of the time  
40 period specified for the commencement of the service connection or  
41 repair and of the time that the utility attempted to make the service  
42 connection or repair, or of a diligent attempt by a utility to notify the  
43 subscriber of delay caused by unforeseen or unavoidable occurrences.

44 e. It shall be a defense to the action if a diligent attempt was made  
45 by the utility to notify the subscriber of delay caused by unforeseen or  
46 unavoidable occurrences beyond the control of the utility, and the

1 utility commenced service within a newly agreed upon a.m. or p.m.  
2 timeframe period.

3

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

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