

CHAPTER 45A

ADMINISTRATIVE RULES OF THE DIVISION
OF CONSUMER AFFAIRS

Authority

N.J.S.A. 56:8-4.

Source and Effective Date

R.1995 d.618, effective November 6, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Executive Order No. 66(1978) Expiration Date

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, expires on November 6, 2000.

Chapter Historical Note

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, was originally filed July 2, 1973, as R.1973 d.176, effective August 1, 1973. See: 5 N.J.R. 151(b), 5 N.J.R. 290(a). Petition for Rulemaking of prescription drug pricing. See: 22 N.J.R. 3166(b).

Subchapter 2, Motor Vehicle Advertising Practices, became effective July 15, 1973 as R.1973 d.183. See: 5 N.J.R. 191(a), 5 N.J.R. 290(d). Revisions to Subchapter 2 became effective November 17, 1986 as R.1986 d.362. See: 8 N.J.R. 235, 8 N.J.R. 563(b). Subchapter 2 was repealed and new rules adopted effective August 17, 1987 as R.1987 d.341. See: 19 N.J.R. 1056(a), 19 N.J.R. 1562(c). Subchapter 2 was repealed and new rules adopted effective May 15, 1989 as R.1989 d.253. See: 21 N.J.R. 115(a), 21 N.J.R. 1368(a).

Subchapter 3 was adopted as new rules, filed June 22, 1973, by R.1973 d.169, effective January 1, 1974. See: 5 N.J.R. 154(a), 5 N.J.R. 239(b).

Subchapter 4 was adopted as new rules, filed August 10, 1973, by R.1973 d.222, effective August 15, 1973. See: 5 N.J.R. 229(d), 5 N.J.R. 317(c).

Subchapter 5 was adopted as new rules, filed September 14, 1973, by R.1973 d.262, effective January 1, 1974.

Subchapter 6 was adopted as new rules by R.1979 d.392, effective October 1, 1979. See: 11 N.J.R. 386(a), 11 N.J.R. 580(e). Subchapter 6 was readopted as R.1984 d.526, filed October 24, 1984. See: 16 N.J.R. 2349(a), 16 N.J.R. 3214(a).

Subchapter 7 was adopted as new rules by R.1973 d.307, effective January 1, 1974. See: 5 N.J.R. 351(b), 5 N.J.R. 390(b). Subchapter 7 was readopted as R.1984 d.527, filed October 24, 1984. See: 16 N.J.R. 2350(a), 16 N.J.R. 3214(b).

Subchapter 8 was adopted as new rules, filed October 26, 1973, by R.1973 d.309, effective December 1, 1973. See: 5 N.J.R. 354(a), 5 N.J.R. 390(e).

Subchapter 9 was adopted as new rules, filed January 21, 1974, by R.1974 d.15, effective March 1, 1974. See: 5 N.J.R. 422(a), 6 N.J.R. 82(b). Amendments were adopted by R.1980 d.200, effective May 6, 1980. See: 12 N.J.R. 45(a), 12 N.J.R. 348(b). Subchapter 9 was readopted as R.1985 d.256, effective April 29, 1985. See: 17 N.J.R. 678(a), 17 N.J.R. 1323(b).

Subchapter 10 was adopted as new rules, filed January 21, 1974, by R.1974 d.16, effective March 1, 1974. See: 5 N.J.R. 421(a), 6 N.J.R. 82(c).

Subchapter 12 was adopted as new rules by R.1975 d.351, effective November 20, 1975. See: 7 N.J.R. 231(b), 7 N.J.R. 571(c). Subchapter 12 was repealed and new rules adopted by R.1988 d.271, effective

June 20, 1988. See: 19 N.J.R. 853(a), 20 N.J.R. 501(b), 20 N.J.R. 1463(a).

Subchapter 13 was adopted as new rules by R.1976 d.245, effective August 3, 1976. See: 8 N.J.R. 233(b), 8 N.J.R. 439(b).

Subchapter 14 became effective August 23, 1976 as R.1976 d.265. See: 8 N.J.R. 304(a), 8 N.J.R. 439(e). Amendments became effective October 10, 1980 as R.1980 d.444. See: 12 N.J.R. 130(a), 12 N.J.R. 672(d). Subchapter 14 expired on October 9, 1985 pursuant to Executive Order No. 66(1978). New Rules became effective December 16, 1985 as R.1985 d.643. See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).

Subchapter 15 was adopted as new rules by R.1982 d.29, effective February 1, 1982. See: 13 N.J.R. 665(a), 14 N.J.R. 160(a).

Subchapter 16 became effective April 1, 1980 as R.1980 d.111. See: 11 N.J.R. 577(a), 12 N.J.R. 209(b). Subchapter 16 expired April 1, 1985, and a new Subchapter 16 became effective May 20, 1985 pursuant to Executive Order No. 66(1978) as R.1985 d.255. See: 17 N.J.R. 679(a), 17 N.J.R. 1325(a).

Pursuant to N.J.S.A. 45:17A-15, Subchapter 17, Sale of Advertising in Journals Relating or Purporting to Relate to Police, Firefighting or Charitable Organizations, was adopted as R.1981 d.294, effective August 6, 1981. See: 13 N.J.R. 235(b), 13 N.J.R. 520(b). Subchapter 17 was repealed by R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Subchapter 19 was adopted as new rules by R.1990 d.371, effective August 6, 1990. See: 22 N.J.R. 786(a), 22 N.J.R. 2331(c).

Subchapter 20 was adopted as new rules by R.1984 d.196, effective May 21, 1984. See: 16 N.J.R. 417(a), 16 N.J.R. 1281(b).

Subchapter 21, originally Representations Concerning and Requirements for the Sale of Kosher Food, was adopted as R.1984 d.113, effective April 2, 1984. See: 16 N.J.R. 220(a), 16 N.J.R. 741(a). Amendments were adopted as R.1984 d.402, effective September 4, 1984. See: 16 N.J.R. 1696(a), 16 N.J.R. 2371(a). Subchapter 21 was repealed and new rules regarding "the Sale of Kosher Products" were adopted as R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d). Amendments were adopted as R.1990 d.433, effective September 4, 1990, and R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 1439(a), 22 N.J.R. 2747(c), 22 N.J.R. 2396(a), 22 N.J.R. 3758(a). Subchapter 21 was repealed and new rules were adopted as R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

Subchapter 22, formerly Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, was adopted pursuant to N.J.S.A. 56:8-4 as R.1985 d.407, effective August 5, 1985. See: 17 N.J.R. 1241(a), 17 N.J.R. 1901(b). Subchapter 21 was repealed and new rules on the subject were adopted as R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d). Amendments were adopted as R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a). Chapter 21 was repealed by R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

Subchapter 23 was adopted as new rules by R.1985 d.306, effective June 17, 1985. See: 17 N.J.R. 680(a), 17 N.J.R. 1581(a).

Subchapter 24 was adopted as new rules by R.1993 d.372, effective July 19, 1993. See: 24 N.J.R. 3019(b), 24 N.J.R. 3666(a), 25 N.J.R. 3235(a).

Subchapter 25 was adopted as new rules by R.1988 d.23, effective January 4, 1988. See: 19 N.J.R. 1967(a), 20 N.J.R. 103(a). Subchapter 25 was repealed and new rules adopted by R.1988 d.520, effective November 7, 1988. See: 20 N.J.R. 2036(a), 20 N.J.R. 2790(b).

Subchapter 26 was adopted as new rules by R.1989 d.65, effective February 6, 1989. See: 20 N.J.R. 2681(b), 21 N.J.R. 339(b).

Pursuant to Executive Order No. 66(1978), Chapter 45A was re-adopted as R.1990 d.606, effective November 9, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Pursuant to Executive Order No. 66(1978), Chapter 45A was re-adopted as R.1995 d.618, effective November 6, 1995. As part of R.1995 d.618, Subchapter 2, Motor Vehicle Advertising Practices, Subchapter 6, Deceptive Practices Concerning Automotive Sales Practices, Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, and Subchapter 8, Tire Distributors and Dealers, were recodified as Subchapters 26A, 26B, 26C and 26D respectively. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. DECEPTIVE MAIL ORDER PRACTICES

13:45A-1.1 General provisions

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., this rule makes unlawful thereunder some specific practices in the mail order or catalog business.

(b) It is an unlawful practice in connection with the advertisement or sale of merchandise for a person conducting a mail order or catalog business to accept money through the mail or any electronic transfer medium, for merchandise ordered by mail, telephone, facsimile transmission or electronic mail and then permit six weeks to elapse without either:

1. Delivering or mailing the merchandise order; or
2. Making a full refund; or
3. Sending the consumer a letter or notice advising the consumer of the duration of an expected delay or the substitution of merchandise of equivalent or superior quality, and offering to send a refund within one week if so requested. If a proposal to substitute merchandise is made, it shall describe, in specific detail, how the substituted merchandise differs from the merchandise ordered; or
4. Sending the consumer substituted merchandise of equivalent or superior quality, together with:
 - i. A written notice offering, without reservation, to accept the return of the merchandise at the seller's expense within 14 days of receipt of the merchandise and, upon request, the consumer's choice of either, a refund of cash paid, including the amount of postage to return the item, or a credit; and
 - ii. A postage-paid letter or card on which the consumer may indicate whether he wishes the purchase price to be refunded or credited to his account within 14 days of receipt of the letter or card by the seller. The consumer's request entered on such a letter or card must be honored by the seller; and
 - iii. The written notice and postage-paid letter or card, as stated in (b)4i and ii above, need not be sent with the merchandise, if in lieu thereof, a statement that the seller will accept the return of the merchandise for a period of at least 14 days without reservation is printed in the catalog itself.

(c) For purposes of (b)3 and 4 above, merchandise may not be considered of "equivalent or superior quality" if it is not substantially similar to the merchandise ordered or not fit for the purposes intended, or if the seller normally offers the substituted merchandise at a price lower than the price of the merchandise ordered.

(d) Subsection (b) above does not apply:

1. To merchandise ordered pursuant to an open-end credit plan as defined in the Federal Consumer Credit Protection Act or any other credit plan pursuant to which the consumer's account was opened prior to the mail order in question, and under which the creditor may permit the customer to make purchases from time to time from the creditor or by use of a credit card; or
2. When all advertising for the merchandise contains a notice (which, in the case of printed advertising, shall be in a type size at least as large as the price) that delay may be expected of a specified period. In such cases, one of the events described in (b) above must occur no later than one week after expiration of the period specified in the advertisement; or
3. To merchandise, such as quarterly magazines, which by their nature are not produced until a future date and for that reason cannot be stocked at the time of order; or
4. To installments other than the first of merchandise, such as magazine subscriptions, ordered for serial delivery.

(e) It is an unlawful practice in connection with the advertisement or sale of merchandise for a person conducting a mail order or catalog business to fail to disclose the legal name of the company and the complete and permanent street address from which the business is actually conducted in any materials, including advertising and promotional materials, order blanks and order forms, which contain a mailing address other than the actual street address from which the business actually engages in or conducts business.

(f) The provisions of this section shall apply to any person who conducts a mail order or catalog business in or from the State of New Jersey or who advertises or sells merchandise via mail order or catalog into this State.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Franchise arrangement; application of New Jersey Consumer Fraud Act. *J & R Ice Cream Corp. v. California Smoothie Licensing Corp.*, C.A.3 (N.J.)1994, 31 F.3d 1259.

Purchaser of rail cars was not a "consumer" and the car design was not "merchandise" under New Jersey Consumer Fraud Act. *R.J. Longo Const. Co., Inc. v. Transit America, Inc.*, D.N.J. 1996, 921 F.Supp. 1295.

Multi-million dollar transaction between large corporations not covered by Consumer Fraud Act. *BOC Group, Inc. v. Lummus Crest, Inc.*, 251 N.J.Super. 271, 597 A.2d 1109 (L.1990).

Action against gas company for misuse of Purchased Gas Adjustment Clause was not cognizable under the Consumer Fraud Act; Public Utilities Commission has exclusive jurisdiction over misuse of such clauses. *Daaleman v. Elizabethtown Gas Co.*, 77 N.J. 267, 390 A.2d 566 (1978).

Respondent's motion to depose the Executive Director of the Office of Consumer Protection, in furtherance of defense that inspection processes were arbitrary and capricious, denied due to lack of good cause showing that information could not be otherwise obtained. *Div. of Consumer Affairs v. Acme Markets, Inc.*, 3 N.J.A.R. 210 (1981).

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SALE OF MEAT AT RETAIL

13:45A-3.1 Definitions

The following words and terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Back ribs” means ribs derived from the rib area of pork loin.

“Bottom sirloin butt” means meat derived from the posterior portion of the loin of cattle after removal of the short loin and which is the lower portion (ventral side) of the sirloin after removal of the top sirloin butt (dorsal side) by a cut following the natural muscle seam (blue tissue).

“Club steak” means meat derived from the anterior end (rib end) of the short loin of cattle or the posterior end (loin end) of the rib. Any labeling of or advertising for “club steak” shall indicate short loin or rib, whichever is appropriate.

excess of 30% (Flour, Water, Salt, Nonfat Dry Milk, Baking Powder, Dry Eggs, Monosodium Glutamate, Dextrose, Flavorings,) Beef fat added 8%, Monosodium Glutamate 1%. Total fat not in excess of 30%.

(c) Any meat food product to which this Section is applicable shall not contain more than 30 per cent fat and the label for such product shall so indicate.

(d) The amount of batter and breading used as a coating for breaded product shall not exceed 30 per cent of the weight of the finished breaded product and the label for such product shall so indicate.

13:45A-3.11 Fabricated steak

Fabricated beef steaks, veal steaks, beef and veal steaks, or veal and beef steaks, and similar products, such as those labeled "Beef Steak, Chopped, Shaped, Frozen," "Veal Steaks, Beef Added," Chopped—Molded—Cubed—Frozen, Hydrolized Plant Protein and Flavoring shall be prepared by comminuting and forming the product from fresh and/or frozen meat; with or without added fat, of the species indicated on the label. Such products shall not contain more than 30 per cent fat and shall not contain added water, binders or extenders.

13:45A-3.12 Supply of meat advertised

No person shall advertise meat for sale at retail unless such person shall have available at all outlets listed in the advertisement a sufficient quantity of the advertised meat to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the product is available only at designated outlets.

13:45A-3.13 Frozen meat

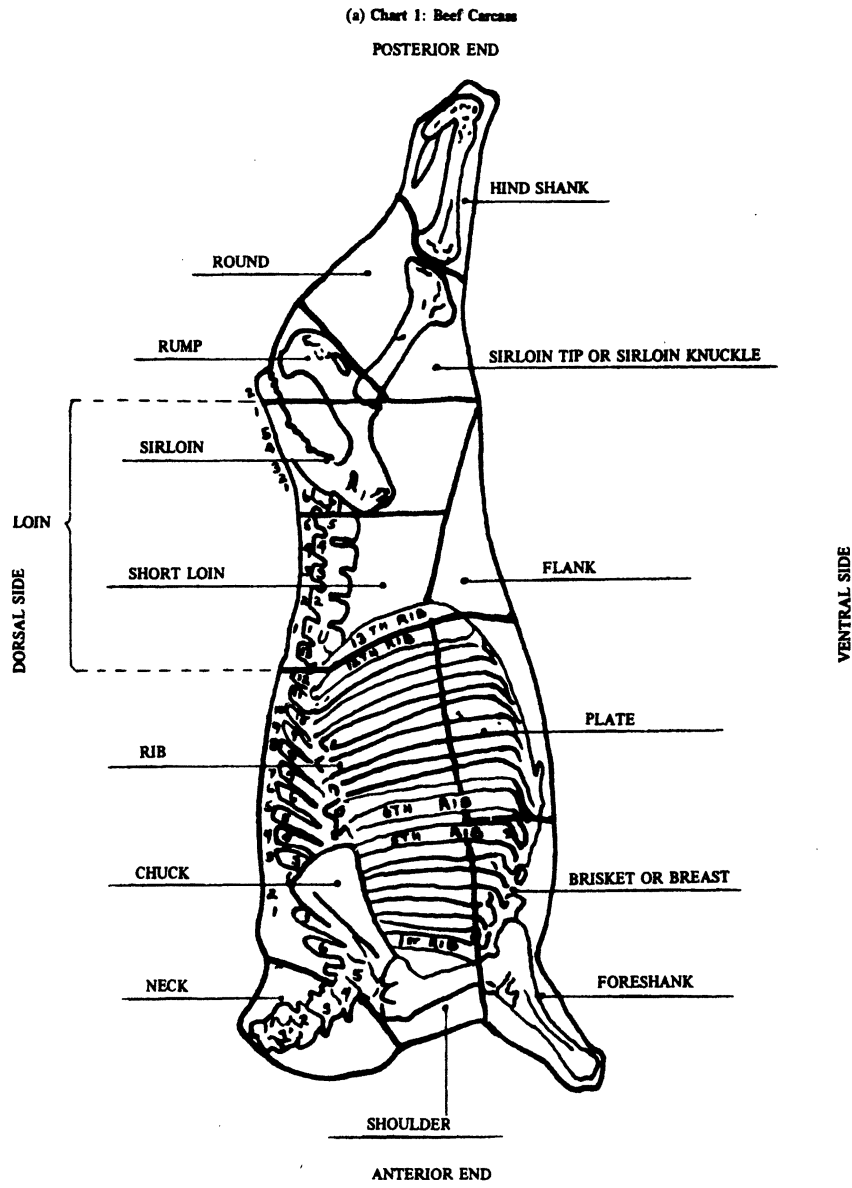
All meat other than that which is used in hamburger, ground beef, ground pork, ground veal or ground lamb which has been frozen at any time prior to such meat being offered or exposed for sale at retail shall be clearly and conspicuously labeled or advertised as "Frozen" or "Frozen and thawed", whichever is appropriate, and such term shall be contiguous to and in the same size and style lettering and on the same background as the product name.

13:45A-3.14 Violations

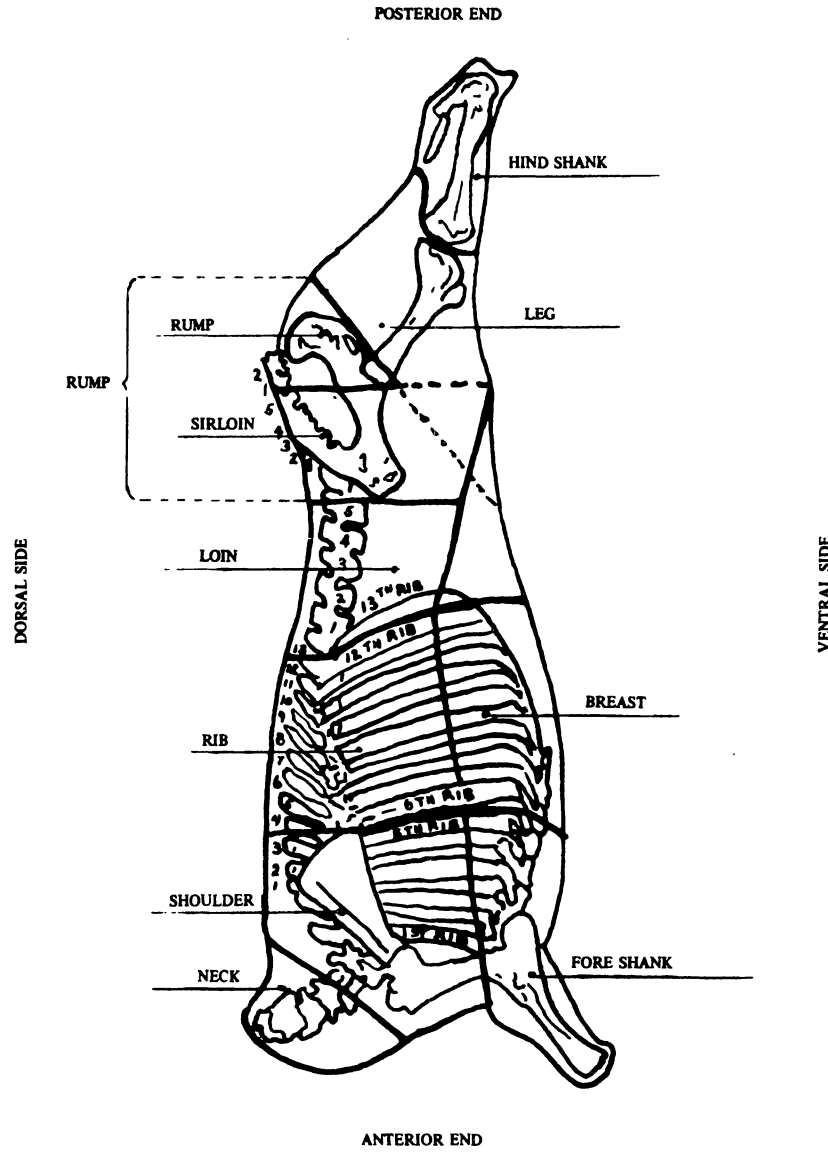
Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*, any violation of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

13:45A-3.15 Meat charts

(a) The meat charts referred to in this rule are as follows:

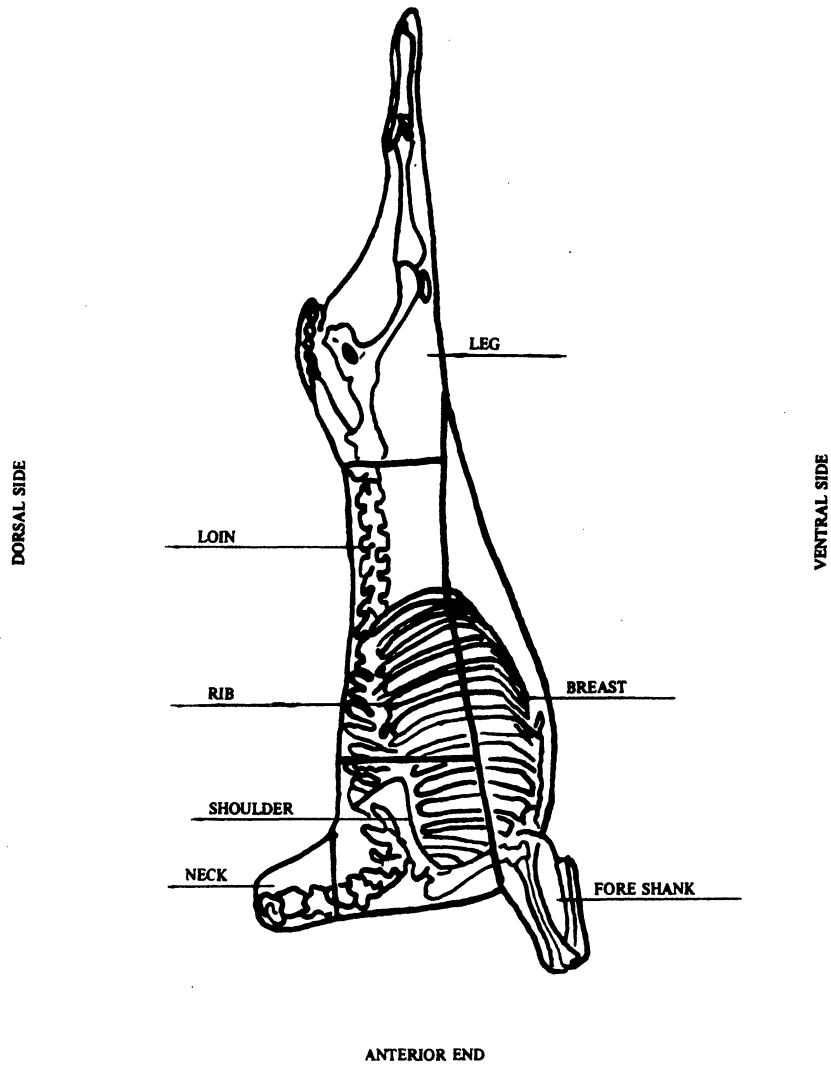


(b) Chart 2: Veal Carcass

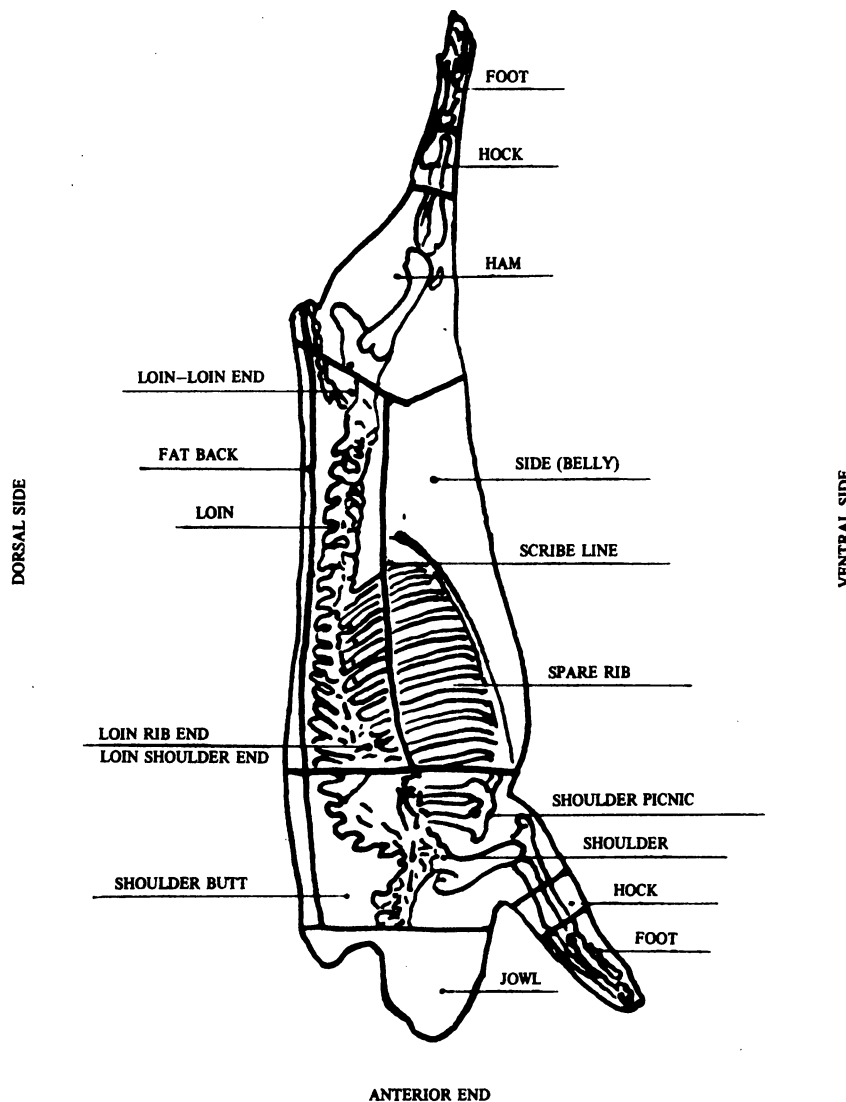


(c) Chart 3: Lamb Carcass

POSTERIOR END



(d) Chart 4: Pork Carcass
POSTERIOR END



SUBCHAPTER 4. BANNED HAZARDOUS PRODUCTS

Case Notes

U.S. v. One Hazardous Product Consisting of a Refuse Bin, D.C., 487 F.Supp. 581 (1980).

13:45A-4.1 Unconscionable commercial practice

It shall be an unconscionable commercial practice for any person, including any business entity, to manufacture, distribute, sell or offer for sale any consumer product contrary to any order of the Consumer Product Safety Commission, pursuant to 15 U.S.C. §2051 et seq.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-4.2 Consumer product defined

(a) For purposes of this rule, the term “consumer product” means any article or component part thereof, produced or distributed:

1. For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise; or
2. For the personal use, consumption or enjoyment of a permanent or temporary household or residence, a school, in recreation or otherwise.

13:45A-4.3 Violations

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. any violation of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTER 5. DELIVERY OF HOUSEHOLD FURNITURE AND FURNISHINGS

13:45A-5.1 Deceptive practices; generally

(a) Any person who is engaged in the sale of household furniture for which contracts of sale or sale orders are used for merchandise ordered for future delivery shall:

1. Deliver all of the ordered merchandise by or on the promised delivery date; or

2. Provide written notice to the consumer of the impossibility of meeting the promised delivery date. The notice shall offer the consumer the option to cancel said order with a prompt, full refund of any payments already made or to accept delivery at a specified later time. Said written notice shall be mailed on or prior to the delivery date.

(b) In the event a seller fails to deliver all of the ordered merchandise on the promised delivery date and makes only a partial delivery, the seller shall comply with the notice requirement of (a) above. Said notice shall offer the consumer the option of cancelling the order with a prompt, full refund of any payments already made or accepting delivery of the balance of the ordered merchandise at a specified later date.

(c) Failure to comply with (a) above shall constitute a deceptive practice under the Consumer Fraud Act.

(d) For purposes of this rule, "household furniture" includes, but is not limited to, furniture, major electrical appliances, and such items as carpets and draperies.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Validity. *State v. Hudson Furniture Co.*, 165 N.J.Super. 516, 398 A.2d 900 (App.Div.1979).

Consumer Fraud Act regulation applies when furniture is delivered untimely. *DiNicola v. Watchung Furniture's Country Manor*, 232 N.J.Super. 69, 556 A.2d 367 (A.D.1989) certification denied 117 N.J. 126, 564 A.2d 854.

Consumer Fraud Act regulations do not apply to breach of warranty. *DiNicola v. Watchung Furniture's Country Manor*, 232 N.J.Super. 69, 556 A.2d 367 (A.D.1989) certification denied 117 N.J. 126, 564 A.2d 854.

In Consumer Fraud Act, "promised merchandise" relates to quantity and description, not to quality of merchandise. *DiNicola v. Watchung Furniture's Country Manor*, 232 N.J.Super. 69, 556 A.2d 367 (A.D. 1989) certification denied 117 N.J. 126, 564 A.2d 854.

13:45A-5.2 Contract forms; date of order

(a) The contract forms or sales documents shall show the **date of the order and shall contain the following sentence in ten-point bold face type:**

The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).

(b) The blank delivery date shall be filled in by the seller either as a specific day of a specific month or as a length of time agreed upon by the buyer and seller (for example, "six weeks from date of order").

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-5.3 Contract form; delayed delivery

(a) The contract forms or sales documents shall conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with N.J.A.C. 13:45A-5.1 and shall contain, on the first page of the contract form or sales document, the following notice in ten-point bold face type:

If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.

(b) The provisions of this subchapter shall apply to any person who sells household furniture in or from the State of New Jersey or to any person located outside of the State of New Jersey who sells household furniture into this State.

(c) It shall be unlawful for any person to use any contract or sales agreement that contains any terms, such as "all sales final" or "no cancellations", which violate or are contrary to the rights and responsibilities provided for by this rule. Any contract or sales agreement which contains such a provision shall be null and void and unenforceable.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-5.4 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. GENERAL ADVERTISING

13:45A-9.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Advertisement” means any attempt by an advertiser, other than by use of a price tag, catalog or any offering for the sale of a motor vehicle subject to the requirements of N.J.A.C. 13:45A-2, to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.

“Advertiser” means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale or rental of merchandise at retail and who placed, either directly or through an advertising agency, an advertisement before the public.

“Catalog” means a multi-page solicitation in which a seller offers goods for sale or rental for a seasonal or specified period of time, from which consumers can order goods directly without going to the seller’s place of business. An advertising circular, distributed through inclusion in a newspaper, representing a seller’s partial offering of goods for sale or rental for a period of time not to exceed two weeks, shall not be considered a catalog.

“Closeout sale” means a sale in which an advertiser offers for sale at a reduced price items of merchandise remaining at one or more specified locations which the advertiser will not have available for sale within a reasonable period of time after all such items have been sold.

“Division” means the Division of Consumer Affairs.

“Factory outlet” means an establishment owned by a manufacturer that is used primarily to offer, at retail, the manufacturer’s products directly to the consumer for his or her own use and not for resale.

“Fictitious former price” means an artificially inflated price for an item or items of merchandise established for the purpose of enabling the advertiser to subsequently offer the item or items at a large reduction.

“Former price or price range” in a price reduction advertisement means an advertised price or price range for an item of merchandise that has been offered or sold by the advertiser in his or her trade area or competitors in their trade area.

“Home appliance” means any electrical, mechanical or thermal article produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence including, but not limited to, air conditioners, cameras, computers, dehumidifiers, dishwashers, dryers, electric blankets, electronic games, fans, freezers, motorized kitchen aids, ovens, radios, ranges, refrigerators, stereo equipment, televisions and washers.

“Merchandise” means any objects, wares, goods, commodities, services or anything offered directly or indirectly to the public for sale or rental at retail.

“Multi-tiered pricing” means a form of offer where the price of merchandise or the extent of a discount is contingent upon the consumer’s merchandise selections, such as the number of units purchased, the purchase of other merchandise pursuant to the terms of the advertiser’s offer, or the total dollar amount of the consumer’s order, for example, “Buy two cans of soda, get a third can at half price.”

“Percentage-off discount” means an offer to sell merchandise expressed in terms of a percentage reduction or range of percentage reductions in price, such as “10% off” or “25% to 50% off.”

“Point of display” means a location within a retail establishment where an item of merchandise is displayed for the purpose of selection by the consumer with the intention of purchase.

“Point of sale” means any location in a retail establishment where purchases of merchandise are totaled by a scanner and payment is made by a consumer.

“Point of sale discount” means a price reduction which, although it is advertised or posted at the point of display, is automatically applied to reduce the retail price of the merchandise at the time it is scanned for consumer purchase, or a price reduction manually entered through a cash reduction or similar device, then scanned for consumer purchase.

“Price advertisement” means any advertisement in which a specific dollar price is stated with regard to specific advertised merchandise.

“Price reduction advertisement” means an advertisement which in any way states or suggests directly or indirectly that merchandise is being offered or made available for sale at a price less than that at which it has been routinely sold or offered for sale in the past or at which it will be sold or offered for sale in the future. The following words and terms or their substantial equivalent, when used in any advertisement except when used exclusively as part of the advertiser’s corporate, partnership or trade name, shall be deemed to indicate a price reduction advertisement: sale, discount, special savings, price cut, bargain, reduced, prices slashed, clearance, regularly, usually, cut rate, originally, formerly, warehouse or factory clearance, buy one get one free, at cost, below cost, wholesale.

“Rain check” means a written statement issued by an advertiser allowing the purchase of designated merchandise at a previously advertised price.

“Scanner” means an electronic system that employs a laser bar code reader to retrieve product identity, price and other information stored in computer memory.

“Targeted discount” means a price reduction on merchandise which reduction is restricted to customers designated by the advertiser, such as those who possess a card or other device bearing a scanner-readable code issued by the advertiser, a particular type of credit card, or some other device which, when read by the scanner, shall apply the discount at the time of purchase.

“Trade area” means that geographical area in which an advertiser solicits or makes a substantial number of sales.

Amended by R.1996, d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

Added “Factory outlet”, “Fictitious former price” and “Former price or price range”; deleted “Reference price”; and amended “Advertisement” and “Home appliance”.

Amended by R.1998 d.489, effective October 5, 1998.

See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).

Rewrote the section.

Case Notes

Held that a franchise or business opportunity venture is “merchandise” within intent of the Consumer Fraud Act; failure of franchiser to provide franchisee with a rule disclosure statement was a per se unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation in violation of the Consumer Fraud Act. *Morgan v. Air Brook Limousine, Inc.*, 211 N.J. Super 84, 510 A.2d 1197 (Law Div. 1986).

13:45A-9.2 General advertising practices

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet reasonably anticipated consumer demand therefor. When an advertisement states a specific period of time during which merchandise will be available for sale, a sufficient quantity of such merchandise shall be made available to meet reasonably anticipated consumer demand during the stated period. When no stated period appears in the advertisement, a sufficient quantity of merchandise shall be made available to meet reasonably anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. The requirement of this subsection shall not be applicable to merchandise which is advertised:
 - i. On an in-store sign only with no corresponding out-of-store sign;
 - ii. As being available in a specific quantity; or
 - iii. As being available in a “limited supply,” pursuant to a “closeout sale” or pursuant to a “clearance sale” if such offering meets the definition of a closeout sale; or if represented to be permanently reduced.

2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condition or availability. By way of illustration, and not by limitation, the following shall be deemed violative of this subparagraph:
 - i. The failure to specifically designate which merchandise items are below cost, if any amount less than all advertised items are below cost, when a statement of below cost sales is set forth in an advertisement;
 - ii. The failure to specifically designate which merchandise items, if any, are damaged or in any way less than first quality condition;
 - iii. The failure to specifically designate merchandise as floor models, discontinued models or one of a kind, when applicable;
 - iv. The failure to clearly designate or describe the retail outlets at which advertised merchandise will or will not be available. Such information need not be disclosed on any in-store advertisement.

3. The failure to conspicuously post notice of advertised merchandise, on the business premises to which the advertisement applies, in proximity to the advertised merchandise or at all entrances to the business premises. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the merchandise or any sign with such terms as “sale,” “as advertised,” “20% off.”

4. In any price advertisement in which a home appliance is offered for sale, the failure of an advertiser to disclose the following information relating to the advertised merchandise: the manufacturer’s name or the merchandise trade name, the model or series number and such other information as may be necessary to clearly delineate the advertised item from other similar merchandise produced by the same manufacturer.

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

6. The use of the terms “Public Notice,” “Public Sale” or words or terms of similar meaning in any advertisement offering merchandise for sale, where such sale is not required by court order or by operation of law, other than a sale conducted by an auctioneer on behalf of a non-business entity.

7. Describing the advertiser through the use of the terms “warehouse,” “factory outlet,” “discount,” “bargain,” “clearance,” “liquidators,” “unclaimed freight,” or other words or terms of similar meaning, whether in the advertiser’s corporate, partnership or trade name or otherwise, where such terms do not reflect a bona fide description of the advertiser being described.

1. John Doe is a retailer of Brand X fountain pens which cost him \$5.00 each. His usual markup is 50 percent over cost. That is, his regular retail price is \$7.50. In order subsequently to offer an unusual "bargain," Doe temporarily raises the price of Brand X pens to \$10.00 each. In so doing, Doe realizes that he will only be able to sell a few pens, if any, at this inflated price. But he does not care, because he intends to maintain that price for only a few days. Then he "cuts" the artificially inflated price of \$10.00 to the usual price—\$7.50 at which time he advertises: "Terrific Bargain: X Pens, Were \$10, Now Only \$7.50." This is obviously a false claim. The advertised "bargain" is not genuine.

2. Retailer Doe advertises Brand X pens as having a "Retail Price \$15.00, My Price \$7.50," when, in fact, only a few small suburban boutique-type stores in the area charge \$15.00. All of the larger outlets, like retailer Doe's, located in and around the main shopping areas charge approximately \$7.50. This advertisement would be deceptive because the price charged by the small suburban boutique or specialty stores would have no real significance to Doe's customers, to whom the advertisement of "Retail Value \$15.00" would suggest a prevailing, and not merely an isolated and unrepresentative price in the area in which they shop.

3. Retailer Doe advertises Brand X pen as "Comparable Value \$15.00" when only a small number of unrepresentative specialty stores in the trade area offer Brand Y, an essentially similar pen, for that price. This is a related form of misleading advertising because the price of the comparable merchandise (that is, Brand Y), which is cited for comparison is not representative of the price for Brand Y being charged by representative retail outlets in the advertiser's trade area.

New Rule, R.1996 d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

13:45A-9.7 Application of regulation

(a) This subchapter shall apply to the following advertisements:

1. Any advertisement uttered, issued, printed, disseminated or distributed within this State concerning goods and services advertised as available at locations exclusively within this State; and

2. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed to any substantial extent within this State concerning goods and services advertised as available at locations within this State and outside this State; and

3. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed primarily within this State concerning goods and services

advertised as available at locations exclusively outside this State; and

4. Any radio and television broadcasts uttered, issued, disseminated or distributed primarily within this State and outside this State, or at locations exclusively outside this State.

(b) An advertiser, a manufacturer, an advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertising seller shall be deemed an advertiser within the meaning of this subchapter, when such entity prepares or places an advertisement for publication. No such entity shall be liable for a violation of this subchapter when the entity reasonably relies upon data, information or materials supplied by an advertising seller for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the entity's control, including but not limited to, the post-publication performance of the advertising seller. Notwithstanding that an advertisement has been prepared or placed for publication by one of the aforementioned entities, the advertiser on whose behalf such advertisement was placed may be liable for any violation of this subchapter.

(c) An advertiser has no liability under this subchapter for a failure to comply with any requirement thereof if the advertiser shows by a preponderance of evidence that failure to comply resulted from actions of persons other than the advertiser which were not, or should not have been reasonably anticipated by the advertiser; or that such failure was the result of a labor strike or a natural disaster such as, but not limited to, fires, floods and earthquakes.

(d) If any provisions of this subchapter or the application thereof to any person or circumstances is held unconstitutional or beyond the statutory powers of the Attorney General, the remainder of this subchapter and the application of such provisions to other persons or circumstances shall not be affected.

Amended by R.1993 d.6, effective January 4, 1993.

See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).

Revised (b).

Recodified from 13:45A-9.4 by R.1996 d.309, effective July 1, 1996 (operative August 15, 1996).

See: 28 N.J.R. 1186(a), 28 N.J.R. 3304(a).

Case Notes

Culpability of advertising agencies and newspapers. *Fenwick v. Kay American Jeep, Inc.*, 136 N.J.Super. 114, 344 A.2d 785 (App.Div.1975) reversed 72 N.J. 372, 371 A.2d 13.

13:45A-9.8 Retail discounts in scanner stores; percentage-off discounts; point-of-sale discounts; multi-tiered pricing offers; targeted discounts

(a) Retail establishments which use scanners that have the capability of providing percentage-off discounts, and wish to offer percentage-off discounts at the point of sale

shall set forth the regular price and the price after any discounts are taken relating to the merchandise purchased by the consumer on the register receipt given to the consumer at the point of sale.

(b) An advertiser who offers a percentage-off discount is not required to disclose the basis of the percentage reduction or the regular price or price range in an advertisement pursuant to N.J.A.C. 13:45A-9.5 provided that:

1. The retail price per unit of merchandise is less than \$100.00; and
2. The regular price and the price after any discounts are taken are set forth on the register receipt given to the consumer at the point of sale.

(c) An advertiser may discount merchandise at the point of sale without marking the merchandise with the discounted price provided that the following information is posted conspicuously in the form of a notice at the point of display:

1. A description of the merchandise or the range or category of merchandise and the price to which the discount shall apply;
2. A notice that the discount will be taken at the time of purchase; and
3. The specific amount or type of discount applicable, such as "\$10.00 off" or "25% off posted price."

(d) Advertisements and point of display materials involving multi-tiered pricing offers made by advertisers shall contain the following:

1. All retail prices or discounts comprising the offer and the types of purchases to which they apply, for example:
 - i. "Treefree Paper Towels—Get first roll at 79¢, 2nd roll at 69¢ and each additional roll at 59¢";
 - ii. "Wonder Hot Dog Rolls—\$1.09 only; 79¢ with purchase of Plochman's Mustard"; and
2. Any limitations applicable to the offer, such as the type, brand or size of the merchandise or restrictions on the number of units which may be purchased.

(e) Advertisements containing targeted discounts shall conspicuously state that the offer is limited to a certain category of consumer and shall specifically identify those consumers. If the merchandise to be discounted is also being advertised at a reduced price for all consumers, the advertisement shall clearly distinguish between the types of offers made by the advertiser and identify those consumers who are entitled to each offer.

1. Any targeted discounts or pricing information posted at the point of display shall clearly and conspicuously state that the offer is limited, and shall identify the customers who are entitled to take advantage of the offer.

New Rule, R.1998 d.489, effective October 5, 1998.
See: 29 N.J.R. 3772(a), 30 N.J.R. 3657(b).

SUBCHAPTER 10. SERVICING AND REPAIRING OF HOME APPLIANCES

13:45A-10.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Home appliance dealer" means any person, including any business entity who, in the ordinary course of business, is engaged in the advertising, sale or lease of home appliances.

"Home appliance repairer" means any person, including any business entity who, in the ordinary course of business, is engaged in the service or repair of home appliances.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-10.2 Required information

(a) Whenever a consumer purchases a home appliance, the home appliance dealer shall supply the consumer with a written copy of any information concerning:

1. Manufacturer's warranties, if any are still applicable;
2. Dealer's warranties, if any;
3. Dealer's service contract, if such is agreed upon, which must include a clear statement of any:
 - i. Basic "diagnostic" charges or any other set fee; and
 - ii. The methods used to determine any additional charge including the charge for labor and parts.

(b) Whenever a consumer requests service on a home appliance from a home appliance repairer, the home appliance repairer shall disclose before the consumer becomes committed to any expense:

1. Any diagnostic charges or other set fees; and
2. The methods used to determine the total charge including the charges for labor and parts.

(c) If the home appliance repairer is also the dealer from whom the appliance was purchased and there was a service contract covering the requested services, the provisions of (b) above shall not apply.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-10.3 Deceptive practices

(a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of repairing and servicing home appliances:

1. Commencing work other than diagnostic work or work included in a diagnostic fee without having obtained the consumer's signature or the signature of the consum-

er's agent on a written itemized estimate of the labor and parts necessary, including specific notation of exchange price on parts where applicable. If such written consent cannot be obtained, repair work may be commenced only if the consumer has been advised of the estimate and has consented thereto and the person advising the consumer has noted the conversation on the estimate as well as the date, time and phone number at which he reached the consumer.

ii. Misrepresent that the seller's products, materials or workmanship are equal to or better than those of a competitor; or

iii. Use or imitate the trademarks, trade names, labels or other distinctive marks of a competitor.

9. Sales representations:

i. Misrepresent or mislead the buyer into believing that a purchase will aid or help some public, charitable, religious, welfare or veterans' organization, or misrepresent the extent of such aid or assistance;

ii. Knowingly fail to make any material statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading; or

iii. Misrepresent that the customer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement.

10. Building permits:

i. No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances; or

ii. Where midpoint or final inspections are required under state laws or local ordinances, copies of inspection certificates shall be furnished to the buyer by the seller when construction is completed and before final payment is due or the signing of a completion slip is requested of the buyer.

11. Guarantees or warranties:

i. The seller shall furnish the buyer a written copy of all guarantees or warranties made with respect to labor services, products or materials furnished in connection with home improvements. Such guarantees or warranties shall be specific, clear and definite and shall include any exclusions or limitations as to their scope or duration. Copies of all guarantees or warranties shall be furnished to the buyer at the time the seller presents his bid as well as at the time of execution of the contract, except that separate guarantees or warranties of the manufacturer of products or materials may be furnished at the time such products or materials are installed.

12. Home improvement contract requirements—writing requirement: All home improvement contracts for a purchase price in excess of \$ 200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties

thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

i. The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;

ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products are to be used, a description of such products or materials shall be clearly set forth in the contract;

iii. The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials, the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated;

iv. The dates or time period on or within which the work is to begin and be completed by the seller;

v. A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement; and

vi. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.

13. Disclosures and obligations concerning preservation of buyers' claims and defenses:

i. If a person other than the seller is to act as the general contractor or assume responsibility for performance of the contract, the name and address of such person shall be disclosed in the oral or written contract, except as otherwise agreed, and the contract shall not be sold or assigned without the written consent of the buyer;

ii. No home improvement contract shall require or entail the execution of any note, unless such note shall have conspicuously printed thereon the disclosures required by either State law (N.J.S.A. 17:16C-64.2 (consumer note)) or Federal law (16 C.F.R. section 433.2) concerning the preservation of buyers' claims and defenses.

Petition for Rulemaking: Denied.

See: 21 N.J.R. 3565(b).

Amended by R.1990 d.125, effective February 20, 1990.

See: 21 N.J.R. 3433(b), 22 N.J.R. 662(d).

Threshold amount at (a)12. changed from \$25.00 to \$100.00.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
 Petition for Rulemaking: Denied.
 See: 31 N.J.R. 2983(a).

R.1982 d.221, effective July 19, 1982.
 See: 14 N.J.R. 464(a), 14 N.J.R. 767(b).

Law Review and Journal Commentaries

Consumer Fraud Act—Attorneys' Fees. Steven P. Bann, 138 N.J.L.J. No. 3, 45 (1994).

Case Notes

Homeowner not entitled to treble damages for violation of consumer fraud regulation where there was no evidence of damages flowing from failure to specify starting and completion dates. *Branigan v. Level on the Level, Inc.*, 326 N.J.Super. 24, 740 A.2d 643 (N.J.Super.A.D. 1999).

Unoccupied property having both residential and commercial uses qualified as "residential or noncommercial property" under Consumer Fraud Act; Act precluded enforcement of alleged oral renovation contract between electrical subcontractor and shareholder of property's corporate owner. *Marascio v. Campanella*, 298 N.J.Super. 491, 689 A.2d 852 (A.D.1997).

"Unlawful" within meaning of Consumer Fraud Act; no person misled or deceived. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Merchant who agreed to perform home improvement work on residence engaged in "unlawful acts". *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Violation of specific regulation; strict liability. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Homeowner sustained "ascertainable loss" within meaning of the Consumer Fraud Act. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Property was residential in character under Consumer Fraud Act, even though part was used as a tavern and liquor store. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Regulations did not exceed Consumer Fraud Act authority. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Home improvement contract did not comply with Consumer Fraud Act and was enforceable. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Finding of N.J.A.C. 13:45A-16.2(a)6v violation upheld; total recovery under the Consumer Fraud Act for compensatory damages in small claims division court may not exceed \$1,000; judgment reduced to limit. *Wisser v. Kaufman Carpet Co., Inc.*, 188 N.J.Super. 574, 458 A.2d 119 (App.Div.1983).

Violation of Consumer Fraud Act. *Swiss v. Williams*, 184 N.J.Super. 243, 445 A.2d 486 (Dist. Ct. of Mercer Co.1982).

SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. PLAIN LANGUAGE REVIEW

13:45A-18.1 Fee for contract review

Any creditor, seller, insurer, lessor, or any person in the business of preparing and selling forms of consumer contracts, requesting a review of a consumer contract, or writing required to complete the consumer transaction, to determine its compliance with the Plain Language Act, N.J.S.A. 56:12-1 et seq., shall pay to the Director of the Division of Consumer Affairs a fee in the amount of \$50.00.

SUBCHAPTER 19. PETITION FOR RULEMAKING

13:45A-19.1 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Director of the Division of Consumer Affairs or with any board, bureau, committee or other agency located within the Division to promulgate, amend or repeal a rule.

(b) With respect to a petition for a new rule, the petitioner shall include his or her name and address, the substance or nature of the request, the problem or purpose which is the subject of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(c) With respect to a petition for an amended rule, the petitioner shall indicate any existing text to be deleted and include any new text to be added.

(d) Within 15 days of receiving the petition, the Director shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of petition pursuant to N.J.A.C. 1:30-3.6(a).

(e) Within 30 days of receiving the petition, the Director or the board, bureau, or other agency located within the Division shall, pursuant to N.J.S.A. 52:14B-4(f), either deny the petition, giving a written statement of its reasons, or proceed to act on the petition, which action may include initiation of a formal rulemaking proceeding. The Director or the administrative head of the appropriate board, bureau, committee or other agency located within the Division shall advise the petitioner in writing of the response to the request and shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition pursuant to N.J.A.C. 1:30-3.6(b).

SUBCHAPTER 20. RESALE OF TICKETS OF ADMISSION TO PLACES OF ENTERTAINMENT

13:45A-20.1 Delayed effective date of regulation

Pursuant to P.L. 1995, c.169, which became effective October 5, 1995, the provisions of N.J.A.C. 13:45A-20.5(c) and 20.5(e) will become effective April 5, 1997.

New Rule, R.1995 d.618, effective December 4, 1995.
 See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-20.1A Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Advertisement means any attempt by a licensee to directly or indirectly induce the purchase of tickets, appearing

in any newspaper, magazine, periodical, circular, sign or other written matter placed before the public, or in any radio or television broadcast or any other media, electronic or otherwise.

“Director” means the Director of Consumer Affairs in the Department of Law and Public Safety.

“Division” means the Division of Consumer Affairs in the Department of Law and Public Safety.

“Person” means corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals.

“Place of entertainment” means any privately or publicly owned and operated entertainment facility within the State of New Jersey such as a theater, stadium, museum, arena, racetrack or other place where performances, concerts, exhibits, games or contests are held and for which entry fee is charged.

“Ticket” means any piece of paper which indicates that the bearer has paid for entry or other evidence which permits entry to a place of entertainment.

“Ticket agent” means any person who is involved in the business of selling or reselling of admission to places of entertainment who charges a premium in excess of the price, plus taxes, printed on the tickets.

“Ticket reseller” means any person who is involved in the business of reselling tickets of admission to places of entertainment who charges a premium in excess of the price, plus taxes, printed on the tickets.

Recodified from 13:45A-20.1 and amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-20.2 Licensure

(a) An application for licensure shall be on a form prescribed by the Director.

(b) An application for licensure shall not be approved unless the Director finds that the submitted application form is complete in all respects.

(c) An application for licensure shall be accompanied by a bond in due form made payable to the Division of Consumer Affairs, State of New Jersey in the sum of \$10,000 with two or more sufficient sureties or an authorized surety company, which bond shall be approved by the Director.

1. A suit to recover on the bond may be brought by the person damaged or by the Division of Consumer Affairs.

2. Upon the commencement of any action or actions against the surety upon the bond, the surety shall immediately notify the Division of Consumer Affairs.

3. The licensee shall file a new and additional bond in the sum of \$10,000 consistent with provisions of P.L. 1983, Chapters 135 and 220 within 30 days of the commencement of a suit to recover on the bond.

4. Any failure by the licensee to file such a new and additional bond within such period shall constitute cause for the revocation of the license previously issued to the licensee.

(d) The Director shall afford an applicant who has been rejected for licensure, an opportunity to be heard in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

1. The burden of establishing that the application should be approved shall rest with the applicant.

(e) The Director may consider in determining whether or not to grant a license:

1. Whether the applicant has previously been found to have violated or been convicted of any statute or crime involving dishonesty, fraud or deceit.

2. Whether the applicant is financially responsible.

13:45A-20.3 Fees: new or renewal license

(a) An application for a new or renewal license, shall be submitted on an application form obtained from the Director, fully executed and accompanied by a fee of \$300.00 in the form of a money order or certified check made payable to the order of the State of New Jersey, Division of Consumer Affairs.

(b) A refund of 50 percent of the fees shall be made by the Division of Consumer Affairs when an application is rejected. Fifty percent of the fee shall be retained by the Division to cover administrative and investigative costs in the processing of the application.

(c) A request by a licensee for a copy of the license issued for the purpose of display in a branch office shall be accompanied by a fee of \$50.00.

(d) A request for a change of business address shall be accompanied by a fee of \$10.00.

Case Notes

Statute prohibiting ticket scalping satisfied due process. *New Jersey Ass'n of Ticket Brokers v. Ticketron*, 226 N.J.Super. 155, 543 A.2d 997 (A.D.1988) certification denied 113 N.J. 364, 550 A.2d 471, certification denied 113 N.J. 365, 550 A.2d 472.

13:45A-20.4 Place of business

(a) A ticket reseller shall maintain a bona fide place of business.

1. A bona fide place of business when used in this subsection shall include, but is not limited to, a place of business which provides reasonable access to the public.

(b) A ticket reseller shall not sell nor permit any employee, agent or servant to sell any ticket for a place of

entertainment at any location other than those places of business licensed for the sale of tickets by the Director.

(c) A licensee shall request the prior approval of the Director for any change in the business address.

(d) A license shall not be transferred nor assigned.

1. A corporate licensee shall notify the Director prior to any change in the ownership interest in the licensed business including but not limited to a transfer of 10 percent or more of stock interest held therein.

(e) A licensee shall clearly and conspicuously post his license in each of his places of business.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-20.5 Sale or exchange

(a) A licensee shall not sell or exchange any ticket for entry to a place of entertainment without first impressing his or her sale or exchange stamp clearly showing the license number issued by the Division on the reverse side of that portion of each ticket which is retained by the owner of the place of entertainment.

1. A ticket shall bear the stamp of every licensee engaged in its sale or exchange.

(b) A place of entertainment or its agent shall not sell or resell any ticket for entry to a place of entertainment unless there is printed on the face of each ticket the price charged therefor.

(c) A place of entertainment shall not sell or resell any ticket for entry to a place of entertainment unless the maximum premium, not to exceed 20 percent of the ticket price or \$3.00 whichever is greater, plus taxes, at which a ticket may be resold shall be printed either in a dollar amount or as a formula on the face or back of any ticket. Where the maximum premium which may be charged for a ticket is printed on the back side of the ticket, the phrase "see reverse side" shall appear on the face of each ticket or ticket stock printed after the effective date of the regulations.

(d) It shall be a prohibited practice for a ticket reseller as a condition of selling or exchanging a ticket for a particular entertainment event, to require a buyer to purchase other tickets.

(e) It shall be a prohibited practice for a licensee to accept or demand any other things of value in excess of the lawful purchase price of a ticket.

(f) Any buyer who pays any monies towards the purchase of a ticket and fails to receive the promised ticket on the promised delivery date shall be given notification by the ticket reseller of the failure to deliver tickets and shall be given the option of receiving a full refund within 30 days or consenting to an extension of the delivery date.

(g) A ticket reseller shall provide a buyer of a ticket with a receipt which specifies the date on which the tickets will be delivered to the buyer and the total purchase price for the tickets.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-20.6 Records

(a) A ticket reseller shall keep full and accurate sets of records maintained in accordance with generally accepted accounting practices and principles.

(b) Records of a ticket reseller shall clearly set forth:

1. The prices at which all tickets have been bought and sold by the ticket reseller.

2. The names and addresses of the persons from whom the ticket reseller purchased the tickets and to whom the ticket reseller sold the tickets.

(c) Records of a ticket reseller shall include sales invoice books.

1. The invoices used shall be printed and numbered consecutively.

2. The invoices used shall be in duplicate, the original of which shall be given to the purchaser and the duplicate kept by the ticket reseller in consecutive order.

3. The invoices used shall include the following information:

i. Date of the transaction;

ii. Name and place of entertainment;

iii. Number of ticket(s) sold;

iv. Price of ticket(s) with ticket reseller's premium recorded separately.

v. Seat location;

vi. Date of performance;

vii. Whether payment was made by cash, check or charge account;

viii. Name and address of purchaser;

(d) Records of a ticket reseller shall include a sales journal which reflects a record of daily sales.

1. The total cost of the installment sale, which shall include the down payment or trade-in or rebate, if any, plus the total of the scheduled periodic payments;

2. The annual percentage rate;
3. The monthly payment figure and the number of required payments; and
4. The amount of any down payment or trade-in required or a statement that none is required.

(b) The following motor vehicle advertising practices concerning credit and installment sale advertisements shall be unlawful:

1. The advertising of credit, including but not limited to such terms as "easy credit" or "one-day credit", other than that actually provided by the advertiser on a regular basis in the ordinary course of business;
2. The use or statement of an installment payment on any basis other than a monthly basis.

Recodified from 13:45A-2.8 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26A.9 On-site disclosures

(a) The following information relating to an advertised motor vehicle must be provided at the main entrance(s) to the business premises where the motor vehicle is displayed or in proximity to the vehicle or on the vehicle itself:

1. A copy of any printed advertisement that quotes a price for the sale or lease of that vehicle; alternatively, a tag may be attached to the motor vehicle(s) stating the advertised price as well as the other information required in N.J.A.C. 13:45A-2.5 or 2.6;
2. A fuel economy label, if required by the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2006; and
3. The Used Car Buyers Guide, if required by the Federal Trade Commission's Used Car Rule, 16 C.F.R. Part 455.2.

(b) A dealer shall not advertise a new motor vehicle which does not have the Monroney label, if required by the Automobile Information Disclosure Act, 15 U.S.C. §§ 1231-1233.

(c) It shall be an unlawful practice to fail to comply with the disclosures required by this section.

Recodified from 13:45A-2.9 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26A.10 Record of transactions

(a) An advertiser shall have a motor vehicle advertised for sale on premises and available for sale at the advertised price during the period of publication, or a record of the sale of that vehicle at the advertised price or less during that period. An advertiser shall have a motor vehicle advertised for lease available for lease at the advertised price during

the period of publication, or a record of the lease of that vehicle at the advertised price or less during that period. Such record shall consist of all applicable advertisements and a copy of the executed contract with the purchaser or lessee of the vehicle; this documentation shall be maintained for 180 days after the transaction and shall be made available for inspection by the Division of Consumer Affairs.

(b) If the motor vehicle is sold or leased during the period of publication, the advertiser must so notify consumers who inquire by telephone or in person.

(c) It shall be an unlawful practice to fail to comply with the requirements of this section.

Recodified from 13:45A-2.10 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

SUBCHAPTER 26B. AUTOMOTIVE SALES PRACTICES

13:45A-26B.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context indicates otherwise.

"Automotive dealer" means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale of motor vehicles at retail or who in the course of any 12 month period offers more than 3 motor vehicles for sale, lease, or rental, or who is engaged in the brokerage of motor vehicles whether for sale, lease, or rental;

"Documentary service fee" means any monies or other thing of value which an automotive dealer accepts from a consumer in exchange for the performance of certain documentary services which include, but are not limited to, the preparation and processing of documents in connection with the transfer of license plates, registration, or title, and the preparation and processing of other documents relating to the sale of a motor vehicle to said consumer;

"Pre-delivery service fee" means any monies or other thing of value which an automotive dealer accepts from a consumer in exchange for the performance of pre-delivery services upon a motor vehicle, and includes, but is not limited to, items which are often described or labeled as dealer preparation, vehicle preparation, predelivery service, handling and delivery, or any other term of similar import;

"Sales document" means the first document which an automotive dealer utilizes to evidence an order for, deposit towards, or contract for the purchase of a motor vehicle by a consumer, and includes but is not limited to, retail orders,

sales invoices, sales contracts, retail installment contracts, and other documents of similar import.

Recodified from 13:45A-6.1 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26B.2 Unlawful practices

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the following practices involving the sale of motor vehicles by automotive dealers shall be unlawful thereunder.

1. With respect to pre-delivery service fees:

i. Accepting, charging, or obtaining from a consumer monies, or any other thing of value, in exchange for the performance of any pre-delivery service for which the automotive dealer receives payment, credit, or other value from any person or entity other than a retail purchaser of the motor vehicle;

ii. Accepting, charging, or obtaining from a consumer monies, or any other thing of value, in exchange for the performance of any pre-delivery service without first itemizing the actual pre-delivery service which is being performed and setting forth in writing on the sales document the price for each specific pre-delivery service;

iii. Except in connection with the sale of used motor vehicles, failing to conspicuously place upon the front of the sales document which contains a pre-delivery service fee, in ten-point bold face type, the following statement:

“You have a right to a written itemized price for each specific pre-delivery service which is to be performed. The automotive dealer may not charge for pre-delivery services for which the automotive dealer is reimbursed by the manufacturer.”

2. With respect to documentary service fees:

i. Accepting, charging, or obtaining from a consumer monies, or any other thing of value, in exchange for the performance of any documentary service without first itemizing the actual documentary service which is being performed and setting forth in writing on the sale document the price for each specific documentary service; or

ii. Representing to a consumer that a governmental entity requires the automotive dealer to perform any documentary service;

iii. Failing to conspicuously place upon the front of the sales document which contains a documentary service fee, in ten-point bold face type, the following:

“You have a right to a written itemized price for each specific documentary service which is to be performed.”

Recodified from 13:45A-6.2 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Automobile dealership engaged in unconscionable business practice when it caused consumer to pay for pre-delivery services, including rustproofing, undercoating, paint sealer and fabric guard, that consumer had explicitly rejected and that were not disclosed in final sales agreement. *Delaney v. Garden State Auto Park*, 318 N.J.Super. 15, 722 A.2d 967 (A.D.1999).

SUBCHAPTER 26C. AUTOMOTIVE REPAIRS

13:45A-26C.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Automotive repair dealer” means any person who, for compensation, engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on a motor vehicle or the replacement of parts including body parts, but excluding those persons who engage in the business of repairing motor vehicles of commercial or industrial establishments or government agencies, under contract or otherwise, but only with respect to such accounts.

“Customer” means the owner or any family member, employee or any other person whose use of the vehicle is authorized by the owner.

“Director” means the Director of the Division of Consumer Affairs.

“Motor vehicle” means a passenger vehicle that is registered with the Division of Motor Vehicles of New Jersey or of any other comparable agency of any other jurisdiction, and all motorcycles, whether or not registered.

“Repair of motor vehicles” means all maintenance and repairs of motor vehicles performed by an automotive repair dealer but excluding changing tires, lubricating vehicles, changing oil, installing light bulbs, batteries, windshield wiper blades and other minor accessories and services. No service or accessory to be installed shall be excluded for purposes of this rule if the Director determines that performance of the service or the installation of an accessory requires mechanical expertise has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

Recodified from 13:45A-7.1 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

-- "Automotive repair dealer" defined. Levin v. Lewis, 179 N.J.Super. 193, 431 A.2d 157 (App.Div.1981).

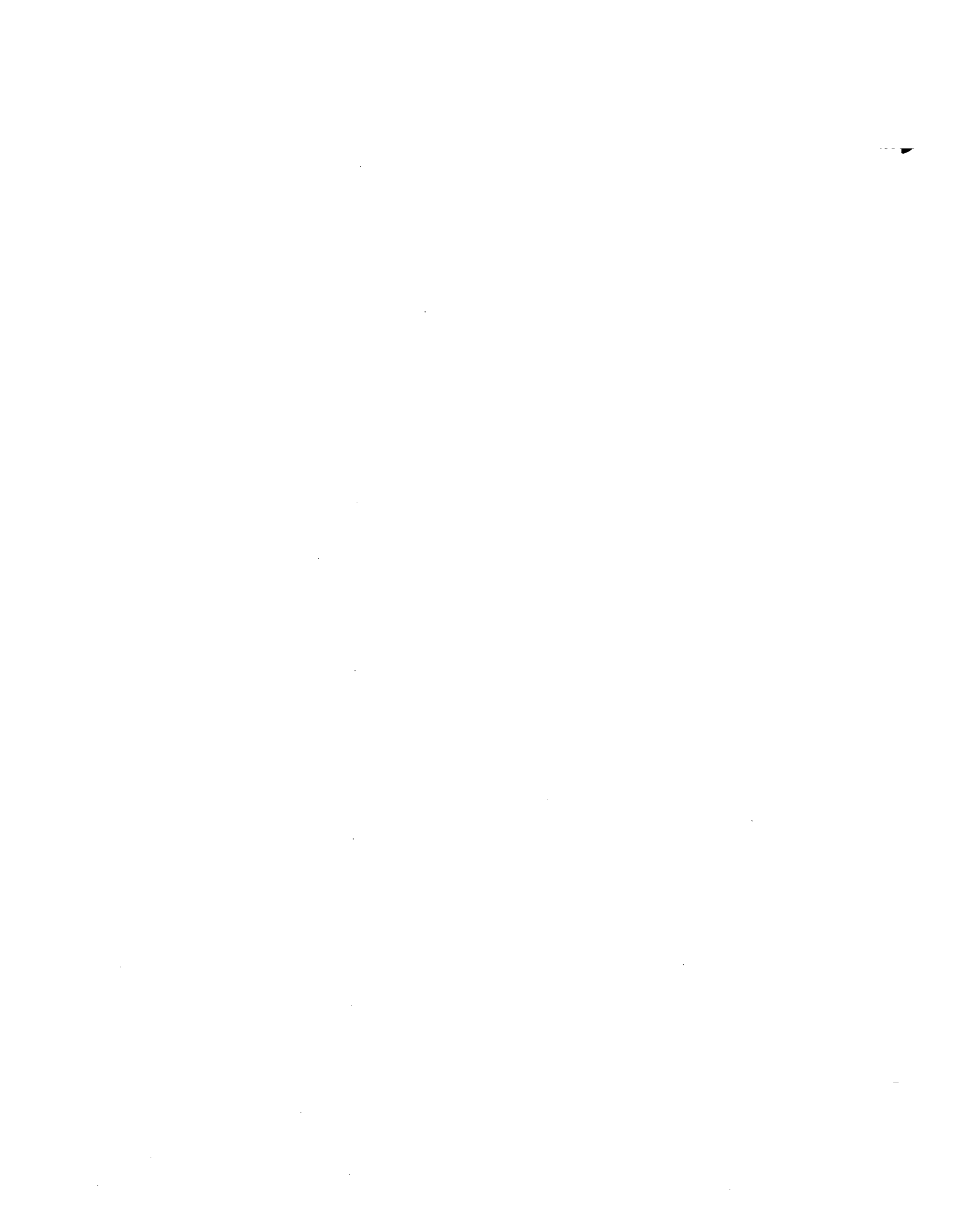
Broad sweep of regulations brought respondent restorer of antique and classic cars within the definition of automotive repair dealer. Levin v. Lewis, 6 N.J.A.R. 85 (1980) affirmed 179 N.J.Super. 193, 431 A.2d 157 (App.Div.1981).

SUBCHAPTER 26D. TIRE DISTRIBUTORS AND DEALERS

15 U.S.C. section 1402 (1970), as may be amended from time to time, are used as defined therein.

13:45A-26D.1 General provisions

(a) For purposes of this rule, all terms that are defined in the National Traffic and Motor Vehicle Safety Act of 1966,



(b) "Tire purchaser" means a person who buys or leases a new or newly retreaded tire, or who buys or leases for 60 days or more a motor vehicle containing a new tire or newly-retreaded tire, for purposes other than resale.

(c) Each motor vehicle dealer who sells a used motor vehicle for purposes other than resale, or who leases a motor vehicle for more than 60 days, that is equipped with new tires or newly-retreaded tires, is considered to be a tire dealer.

(d) Each person selling a new motor vehicle to first purchasers for purposes other than resale that is equipped with tires that were not on the motor vehicle when shipped by the vehicle manufacturer is considered a tire dealer.

Recodified from 13:45A-8.1 and amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26D.2 Deceptive practices

(a) It shall be a deceptive practice in connection with the sale of tires to consumers resident in New Jersey, or by tire distributors or dealers doing business in New Jersey, unless the tire distributor or dealer who makes the sale provides the retail purchaser with a true copy of the information that the seller, tire distributor or his designee forwards to the manufacturer as required by 49 C.F.R. section 574.8, at the time such information is forwarded.

(b) Such information includes:

1. Name and address of the tire purchaser;
2. Tire identification number molded into or onto the sidewall of the tire sold;
3. Name and address of the tire seller.

Recodified from 13:45A-8.2 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-26D.3 Violations

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violations of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

Recodified from 13:45A-8.3 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

SUBCHAPTER 26E. MOTORIZED WHEELCHAIR DISPUTE RESOLUTION

Authority

N.J.S.A. 56:8-4, 56:12-83 and 56:12-86.

Source and Effective Date

R.1996 d.407, effective August 19, 1996.
See: 28 N.J.R. 2320(a), 28 N.J.R. 3965(a).

13:45A-26E.1 Purpose and scope

(a) The purpose of this subchapter is to implement the Motorized Wheelchair Lemon Law, P.L. 1995, c.233, by establishing a motorized wheelchair dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method for computing the refund, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motorized wheelchairs.

(b) This subchapter applies to:

1. Manufacturers of motorized wheelchairs sold or leased in the State of New Jersey;
2. All purchasers, lessees and consumers as defined in N.J.S.A. 56:12-75(l) of motorized wheelchairs sold or leased in the State of New Jersey; and
3. Motorized wheelchair dealers servicing motorized wheelchairs.

13:45A-26E.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"Days" means calendar days.

"Director" means the Director of the Division of Consumer Affairs.

"Dispute Resolution System" means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motorized wheelchair nonconformity(s) through summary administrative hearings.

"Manufacturer" means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's motorized wheelchairs, but does not include a motorized wheelchair dealer.

"Motorized wheelchair" means any motor-driven wheelchair, including a demonstrator and all accompanying power accessories utilized to operate the wheelchair, which a consumer purchases or accepts transfer of in this State for the purpose of increasing independent mobility, in the activities of daily living of an individual who has limited or no ambulation abilities, and includes motorized power scooters designed primarily for indoor use and retrofit power units designed to motorize power wheelchairs.

“Motorized wheelchair dealer” or “dealer” means a person who is in the business of selling motorized wheelchairs in New Jersey.

“Motorized wheelchair lessor” or “lessor” means a person who leases or rents a motorized wheelchair to a consumer, or who holds the lessor’s rights, under a written lease or written rental agreement.

“Nonconformity” means a condition or defect that substantially impairs the use, value or safety of a motorized wheelchair, and which is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair. A nonconformity does not include a condition or defect which results from abuse, neglect or unauthorized modification or alteration of the motorized wheelchair by a consumer.

“OAL” means Office of Administrative Law.

“Reasonable attempt to repair” means, within the term of an express warranty applicable to a new motorized wheelchair, or within one year after first delivery of the motorized wheelchair to a consumer, whichever is sooner, that:

1. A nonconformity within the warranty has been subject to repair by the manufacturer, lessor or any of the manufacturer’s authorized dealers at least three times and the nonconformity continues; or

2. The motorized wheelchair is out of service for an aggregate of at least 20 days because of a nonconformity, after having been returned to the manufacturer, motorized wheelchair lessor or any of the manufacturer’s authorized dealers for repair.

“Wheelchair Lemon Law” means P.L. 1995, c.233 (N.J.S.A. 56:12-74 et seq.), an Act providing certain protections to consumers who purchase, lease or rent motorized wheelchairs.

13:45A-26E.3 Manufacturer warranty

(a) At the time of purchase, lease or rental of a new motorized wheelchair in the State of New Jersey, the manufacturer, either directly or through an authorized dealer or lessor, shall furnish the consumer with an express warranty for the motorized wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer.

(b) In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of a motorized wheelchair that, for a period of one year from the date of first delivery to the consumer, the motorized wheelchair will be free from any condition or defect which substantially impairs the use, value or safety of the wheelchair to the consumer.

13:45A-26E.4 Wheelchair Lemon Law Unit

(a) There is established within the Division of Consumer Affairs a section which will process Wheelchair Lemon Law matters, to be known as the Wheelchair Lemon Law Unit (WLLU).

(b) The Wheelchair Lemon Law Unit shall, upon request, provide consumers with a brochure setting forth:

1. Information regarding a consumer’s rights and remedies under the relevant law; and
2. The procedure to be followed in order to participate in the various dispute resolution systems.

(c) All correspondence to the Division of Consumer Affairs regarding Wheelchair Lemon Law matters shall be directed to the attention of the Wheelchair Lemon Law Unit, as follows:

Division of Consumer Affairs
Wheelchair Lemon Law Unit
Post Office Box 45026, 124 Halsey Street
Newark, New Jersey 07101

13:45A-26E.5 Repair of nonconformity

(a) When a consumer believes that a new motorized wheelchair does not conform to an applicable express warranty, the consumer shall:

1. Notify the manufacturer, motorized wheelchair lessor or any of the manufacturer’s authorized motorized wheelchair dealers of the nonconformity by certified mail, return receipt requested, each time a nonconformity occurs; and
2. Make the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to the consumer.

(b) If, within the terms of an express warranty applicable to a new motorized wheelchair, or within one year after first delivery of the motorized wheelchair to a consumer, which ever is earlier, substantially the same nonconformity has been subject to repair three or more times by the manufacturer, lessor or any of the manufacturer’s authorized dealers and the nonconformity continues to exist, or the motorized wheelchair has been out of service by reason of repair for one or more nonconformities for an aggregate total of 20 or more days since the original delivery of the motorized wheelchair, and a nonconformity continues to exist, and the manufacturer refuses to replace or refund the price of the motorized wheelchair after one of the above conditions occurs, then the consumer shall be considered as having met the criteria necessary to pursue a Wheelchair Lemon Law claim and may then:

1. Refer the matter to the manufacturer for resolution through the manufacturer’s dispute resolution settlement procedure;

2. Refer the matter to the WLLU for dispute resolution; or

3. File an action in the Superior Court of New Jersey. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Wheelchair Lemon Law shall mail a copy of the initial or response pleading containing the claim, counterclaim or defense to the Attorney General within 10 days after filing the pleading with the court.

13:45A-26E.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer shall provide the following items to the WLLU by certified mail, return receipt requested:

1. A completed Application for Dispute Resolution which can be obtained from the WLLU; and

2. Photocopies of the consumer's written notification(s) of the nonconformities to the manufacturer sent prior to the expiration of the manufacturer's warranty.

(b) If application forms are not available, a consumer may file a written request for dispute resolution which shall be accepted by the WLLU if that written request contains all information, items and statements listed in N.J.A.C. 13:45A-26E.7.

13:45A-26E.7 Application

(a) Application for Dispute Resolution shall require submission of the following:

1. The name, address and telephone number of the consumer as well as the lienholder, if any;

2. The date of the original delivery of the motorized wheelchair to the consumer;

3. A written account of the events resulting in the dispute including description(s) of the claimed nonconformity(ies) and a chronology of the repair attempts;

4. Photocopies of the statements of repair given to the consumer by the manufacturer through its dealer, each time a motorized wheelchair is returned from being examined or repaired; and

5. Photocopies of the agreement of sale or lease, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including, but not limited to:

i. Sales tax;

ii. Finance charges;

iii. Rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period when the consumer's motorized wheelchair was out of service due to a nonconformity;

iv. Prescription for the wheelchair from a licensed medical professional if the consumer purchased or leased the wheelchair by prescription;

v. Documents from third-party payors; and

vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes that the motorized wheelchair's use, market value or safety is substantially impaired by the nonconformity(ies) complained of;

2. That the nonconformity(ies) complained of is (are) not the result of abuse, neglect or unauthorized modifications of the motorized wheelchair by anyone other than the manufacturer or its dealer;

3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least three attempts to correct the same substantial defect, or the motorized wheelchair was out of service by reason of repair for at least an aggregate of 20 days;

4. That within the term of protection:

i. The consumer gave the manufacturer or its dealer at least three attempts to repair substantially the same nonconformity and the nonconformity continues to exist; or

ii. The motorized wheelchair was out of service by reason of repair for one or more nonconformities for an aggregate total of 20 or more days since the original delivery of the motorized wheelchair, and the nonconformity(ies) continues to exist; and

5. Whether the consumer wishes to appear at the hearing in person or instead will allow a decision to be rendered by the OAL on the papers submitted by both parties. This option will be available only in the event the manufacturer does not object to a proceeding on the papers in its response pursuant to N.J.A.C. 13:45A-26E.10(f).

Administrative Correction.
See: 28 N.J.R. 4105(a).

13:45A-26E.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of \$50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs." The filing fee shall be nonrefundable.

(b) The filing fee shall be requested by the WLLU when it has determined that the consumer's application is complete, that it complies with this subchapter and the Wheelchair Lemon Law and that it is eligible for the WLLU's Dispute Resolution System.

Administrative Correction.
See: 28 N.J.R. 4105(a).

13:45A-26E.9 Processing of applications

(a) Submitted applications shall be reviewed by the WLLU for completeness and compliance with the Wheelchair Lemon Law and this subchapter.

1. Incomplete applications shall be returned to the consumer for completion.

2. Applications not in compliance with this subchapter and the Wheelchair Lemon Law shall be rejected and the WLLU shall notify the consumer of the reason for the rejection. However, no judgment shall be made by the WLLU as to whether the claimed defect is substantiated by the evidence or whether the defect substantially impairs the use, market value or safety of a motorized wheelchair.

(b) Upon receipt of the filing fee of \$50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

13:45A-26E.10 Notification and scheduling of hearings

(a) By August 29, 1996, each manufacturer of motorized wheelchairs sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Wheelchair Lemon Law Unit, the name, address, telephone and telefax number of the person designated by the manufacturer to receive notices under this dispute resolution process. It shall be the duty of the manufacturer to update this information, as necessary.

(b) On the day that an application is accepted for resolution, the WLLU shall send a notice by certified mail, return receipt requested to the consumer and the manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted and shall provide general information about the resolution process.

(c) The WLLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the WLLU simultaneously with the notice of acceptance of the application, to the manufacturer or the manufacturer's designee. Within 10 days of receipt of the notice of acceptance of the consumer's application for dispute resolution, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the clerk of the Office of Administrative Law at 185 Washington Street, Newark, New Jersey 07102, a response to each of the statements set forth in the consumer application. The response shall also state whether the manufacturer objects to a proceeding on the papers if requested by the consumer.

(g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

Cross References

Motorized wheelchair dispute resolution, applications, proceeding on the papers, see N.J.A.C. 13:45A-26E.6.

13:45A-26E.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4 of the Wheelchair Lemon Law, whether through the Division of Consumer Affairs motorized wheelchair dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1. The total purchase price of the wheelchair including finance charges, sales tax or, in the case of a lease, the total sum of lease payments made, including any down payment,

2. The cost of any necessary modifications arranged, installed or made by the manufacturer or its dealer within one year after the original date of delivery,

3. Other charges or fees, including, but not limited to, actual expenses incurred by the consumer for the rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair for the period during which the consumer's motorized wheelchair was out of service due to a nonconformity.

(b) From the total sum of items in (a) above, a deduction shall be made, representing an allowance for use. This deduction shall be calculated as follows: the full purchase price of the motorized wheelchair shall be multiplied by a fraction, the denominator of which is 1,825 and the numerator of which is equal to the number of days that the wheelchair was used before the consumer first reported the problem to the dealer or the manufacturer.

Administrative Correction.

See: 28 N.J.R. 4105(a).

13:45A-26E.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, and the OAL. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(c) The manufacturer shall advise the Director as to its compliance with the final decision or its intent to appeal the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5,000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

13:45A-26E.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of the Superior Court by filing a notice of appeal with the court as well as the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 45A-26E.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus \$2,500 for anticipated attorney's fees and other costs;
2. Which sum shall be secured by cash or its equivalent; and
3. Payable to the consumer.

13:45A-26E.14 Manufacturer's informal dispute resolution system

(a) The WLLU shall compile a roster of American and foreign manufacturers of motorized wheelchairs sold or leased in New Jersey.

(b) Manufacturers who establish or participate in an in-house customer assistance mechanism, private arbitration, private buy-back program, or any other type of dispute resolution system shall, by September 18, 1996:

1. Advise the WLLU of the existence of its procedure mentioned in (b) above; and

2. Send the WLLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure and shall include all necessary addresses and phone numbers.

13:45A-26E.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of motorized wheelchair disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The initial index and statistical record of compliance shall be made available to the public on January 1, 1997 and every 12 months thereafter.

SUBCHAPTER 26F. UNFAIR TRADE PRACTICES—USED MOTOR VEHICLES—SALE AND WARRANTY

Authority

N.J.S.A. 56:8-4, 56:8-78 and 56:8-80.

Source and Effective Date

R.1999 d.45, effective February 1, 1999.
See: 30 N.J.R. 518(a), 31 N.J.R. 446(a).

13:45A-26F.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 56:8-67 et seq., commonly known as the Used Car Lemon Law. The subchapter specifies which used motor vehicles are subject to the Act; the purchaser's as well as the dealer's obligations under the Act; the warranties which the dealer must provide; the conditions which must be met before a purchaser may waive a warranty; and the dealer's bonding and reporting requirements. In addition, the subchapter establishes a dispute resolution program within the Division of Consumer Affairs in conjunction with the Office of Administrative Law.

(b) This subchapter applies to:

1. Dealers (as defined in N.J.A.C. 13:45A-26F.2), who sell used motor vehicles in the State of New Jersey; and
2. All consumers (as defined in N.J.A.C. 13:45A-26F.2), of used motor vehicles in the State of New Jersey.

13:45A-26F.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

“As is” means a used motor vehicle sold by a dealer to a consumer without any warranty, either express or implied, and with the consumer being solely responsible for the cost of any repairs to that motor vehicle.

“Consumer” means the purchaser or prospective purchaser, other than for the purpose of resale, of a used motor vehicle normally used for personal, family or household purposes.

“Covered item” means and includes the following components of a used motor vehicle: Engine—all internal lubricated parts, timing chains, gears and cover, timing belt, pulleys and cover, oil pump and gears, water pump, valve covers, oil pan, manifolds, flywheel, harmonic balancer, engine mounts, seals and gaskets, and turbo-charger housing; however, housing, engine block and cylinder heads are covered items only if damaged by the failure of an internal lubricated part. Transmission Automatic/Transfer Case—all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, seals and gaskets. Transmission Manual/Transfer Case—all internal lubricated parts, transmission mounts, seals and gaskets, but excluding a manual clutch, pressure plate, throw-out bearings, clutch master or slave cylinders. Front-Wheel Drive—all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, seals and gaskets. Rear-Wheel Drive—all internal lubricated parts, propeller shafts, supports and U-joints, axle shafts and bearings, seals and gaskets.

“Dealer” means any person or business which sells, or offers for sale, a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period.

“Deduction for personal use” means the mileage allowance set by the Federal Internal Revenue Service for business usage of a motor vehicle in effect on the date a used motor vehicle is repurchased by a dealer in accordance with N.J.S.A. 56:8-71, multiplied by the total number of miles a used motor vehicle is driven by a consumer from the date of purchase of that vehicle until the time of its repurchase.

“Director” means the Director of Consumer Affairs in the Department of Law and Public Safety.

“Excessive wear and tear” means wear or damage to a used motor vehicle beyond that expected to be incurred in normal circumstances.

“Material defect” means a malfunction of a used motor vehicle, subject to a warranty, which substantially impairs its use, value or safety.

“Model year” means the calendar year beginning January 1 and ending December 31 of the year listed on the motor vehicle’s title or certificate of ownership and vehicle identification number.

“Repair insurance” means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specified mileage and provided at an extra charge beyond the price of the used motor vehicle.

“Sale” means the transfer of title of a used motor vehicle from the owner-seller to the purchaser-consumer and does not include those transactions in which the owner-seller has obtained title to, or is granted the right to sell, a used motor vehicle by operation of law (for example, pursuant to N.J.S.A. 2C:64-7 or 54:49-13a), or in which the seller is a public entity or governmental unit.

“Service contract” means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specific mileage or provided at an extra charge beyond the price of the used motor vehicle.

“Used motor vehicle” means a passenger motor vehicle, excluding motorcycles, motor homes and off-road vehicles, title to, or possession of which has been transferred from the person who first acquired it from the manufacturer or dealer, and so used as to become what is commonly known as “secondhand,” within the ordinary meaning thereof but does not mean a passenger motor vehicle, subject to a motor vehicle lease agreement which was in effect for more than 90 days, which is sold by the lessor to the lessee, or to a family member or employee of the lessee upon the termination of the lease agreement.

“Warranty” means any undertaking, in writing and in connection with the sale by a dealer of a used motor vehicle, to refund, repair, replace, maintain or take other action with respect to the used motor vehicle, and which is provided at no extra charge beyond the price of the used motor vehicle.

13:45A-26F.3 Dealer warranty; form; scope; purchaser’s obligations

(a) Upon the sale of a used motor vehicle in the State of New Jersey, the dealer shall furnish the consumer with a written warranty which meets the requirements of (c) below, unless:

1. The purchase price of the used motor vehicle is less than \$3,000;
2. The used motor vehicle is eight or more model years old;
3. The used motor vehicle has been declared a total loss by an insurance company and the consumer has been notified in writing of that fact at, or prior to, sale;
4. The used motor vehicle has more than 60,000 miles and the consumer elects to waive the warranty in writing pursuant to N.J.A.C. 13:45A-26F.4; or
5. The used motor vehicle has more than 100,000 miles.

Administrative change.
Sec: 31 N.J.R. 768(b).

APPENDIX C

Waiver of New Jersey Used Motor Vehicle Limited Warranty

I understand that because the following used motor vehicle is seven or less model years old and has an odometer reading which exceeds 60,000 miles, the dealer is required under the Used Car Lemon Law to give me a 30-day or 1,000 mile warranty, whichever comes first. However, after negotiating the price of the vehicle with the selling dealer, I hereby waive (give up) my right to a limited warranty on this vehicle and purchase the vehicle "as is". I understand that because the used motor vehicle is sold "as is," it means that the vehicle is being sold to me by the dealer without any warranty, either expressed or implied, and that I will be solely responsible for the cost of any repairs to it.

By signing this document, I acknowledge that because of the age and mileage of the below described vehicle, I would have been entitled under the law to a 30-day or 1,000 mile (whichever comes first) warranty. However, I have voluntarily waived my right to that warranty on the vehicle because I have negotiated a lower price for it without the warranty.

Year _____ Make _____ Model _____

Vehicle Identification Number _____ Odometer Reading _____

Date Purchaser's Signature Co-Purchaser's Signature (if applicable)

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SUBCHAPTER 27. (RESERVED)

SUBCHAPTER 28. MOTOR VEHICLE LEASING

Authority

N.J.S.A. 56:8-4 and 56:12-60 et seq., specifically 56:12-69.

Source and Effective Date

R.1996 d.129, effective March 4, 1996. See: 27 N.J.R. 4130(a), 28 N.J.R. 1394(b).

Subchapter Historical Note

Subchapter 28, Motor Vehicle Leasing, was adopted as N.J.A.C. 13:45A-28.8 by R.1996 d.129, effective March 4, 1996. See: Source and Effective Date.

13:45A-28.1 through 13:45A-28.7 (Reserved)

13:45A-28.8 Credit check of lessee; right to review contract

(a)-(c) (Reserved)

(d) A lessee may waive his or her right to review the contract under N.J.S.A. 56:12-67b(1) provided the lessee obtains a waiver from the lessor which appears in 12-point Times Roman print (except for the document title "WAIVER" which shall appear in 14-point Times Roman print) and contains the following:

WAIVER

I HAVE BEEN ADVISED THAT UNDER THE NEW JERSEY CONSUMER PROTECTION LEASING ACT, N.J.S.A. 56:12-60 et seq., I AM ENTITLED TO REVIEW THE LEASE CONTRACT FOR ONE 24-HOUR BUSINESS DAY BEFORE SIGNING. I CHOOSE TO WAIVE THAT RIGHT AND SIGN THE LEASE NOW.

LESSEE'S (CONSUMER'S) INITIALS

LESSOR'S (DEALER'S) INITIALS

CO-LESSEE'S INITIALS

VEHICLE: Year _____ Make _____ Model _____ VIN Number _____

THE LESSOR (DEALER) HAS REVIEWED THE FOLLOWING ELEMENTS OF THE LEASE DISCLOSURE WITH ME:

\$_____ MSRP (New Vehicle Only)
\$_____ Total Cost of Options and Extras Not Included in MSRP
\$_____ Acquisition Fee
\$_____ Security Deposit
\$_____ Optional Warranty or Insurance Charge

\$_____ Title and Registration Fees for:
_____ First Year of Lease, or
_____ Full Term of Lease
\$_____ Gross Capitalized Cost of Vehicle
\$_____ Capitalized Cost Reduction, includes:
\$_____ Initial Cash Payment
\$_____ Trade-in Credit
\$_____ Rebates
\$_____ Total Capitalized Cost/Adjusted Capitalized Cost Residual Value
\$_____ Per Mile Over _____ Miles
\$_____ Amount of Periodic Payment
_____ Total Number of Periodic Payments
\$_____ Total Fixed Cost of Lease (No Option to Purchase Vehicle) or
\$_____ Total Cost of Lease (With Option to Purchase)

It has been explained to me that if I terminate this lease early, I may have to pay significant costs.

(Lessee's and Lessor's Initials)

Excess Wear and Damage Charges have been explained to me.

(Lessee's and Lessor's Initials)

(For leases with purchase option): How I may purchase this vehicle at the end of the lease has been explained to me.

(Lessee's and Lessor's Initials)

I UNDERSTAND THAT THIS IS A LEASE AGREEMENT AND NOT A PURCHASE AGREEMENT, THAT THE PROPERTY BEING LEASED MAY NOT HAVE ANY EQUITY OR OWNERSHIP VALUE TO ME AT THE END OF THE LEASE AND THAT THE LEASED PROPERTY BELONGS TO THE LESSOR.

Dated _____

Lessee's (Consumer's) Signature

Co-Lessee's Signature

Lessor's Signature

1. The waiver shall be completed in full without any blank spaces to be filled in after the waiver has been signed by the lessee. Any item which is inapplicable may be marked "not applicable" or "NA".

2. The waiver shall be retained by the lessor for the duration of the lease and a copy shall be given to the lessee upon signing.

3. A copy of the waiver shall be provided to the Division of Consumer Affairs upon request.

Administrative correction. See: 28 N.J.R. 1860(a).