



AMENDING NEW JERSEY'S CONSUMER FRAUD ACT

The New Jersey Consumer Fraud Act (CFA) was enacted in 1960 to protect New Jersey citizens against deceptive business practices. As one of the first consumer protection laws in the country, it was heralded as a great success and served as the model for similar legislation in many other states.

Over the years, the law has been amended by the legislature and expanded by the courts into an enormous and unwieldy piece of legislation. Compliance is difficult, especially for New Jersey's small businesses. It is prone to abuse, incentivizes unnecessary litigation, and makes even technical violations extraordinarily costly to resolve. It is now a significant national outlier in the burdens it places on businesses and the court system.

Though suing under the CFA was never intended to be an avenue of first resort when resolving business disputes, especially minor ones where there are alternatives to litigation, it is increasingly common. Why is this happening?

- Plaintiffs do not have to prove that defendants actually defrauded or deceived them to recover damages or attorney's fees. In many cases a technical violation will suffice.
- Plaintiffs do not need to show out-of-pocket losses.
- Plaintiffs do not need to live in New Jersey to file a claim here.

The broad scope of the law and the ease with which suits can be filed has many unintended consequences:

- **Discouraging job creation and entrepreneurship in New Jersey.** The risk of CFA litigation is a deterrent to legitimate businesses coming to New Jersey. Making lawsuits the default form of problem solving in routine business disputes discourages job creation and leads to a diminished tax base, less vibrant communities, and higher prices for goods and services.
- **Higher costs for consumers.** The price of protecting against potential lawsuits and defending against existing ones is built into the prices paid by New Jersey's consumers.
- **Wasting public funds.** As New Jersey streamlines its state budget and taxpayers are forced to do more with less, excessive litigation is costing our courts precious time and resources.

One of NJCJI's top priorities this session is adopting some basic, technical changes that will make the CFA less onerous while still providing strong protections to consumers. NJCJI urges the legislature to:

- Limit the CFA to transactions occurring in the State of New Jersey or to transactions with New Jersey residents.
- Require plaintiffs to prove that they relied on the misrepresentation when they purchased the product or service.
- Require consumers to ask for their money back or for the alleged fraud to be fixed prior to bringing suit.
- Limit the award of attorney's fees and costs to those fees reasonably attributable to the CFA claim.
- Allow the court discretion in awarding treble damages, as is common in other states.
- Limit the CFA's applicability against industries that are already subject to the Federal Trade Commission and other regulatory structures.