



MEMORANDUM

TO: Members of Assembly Consumer Affairs
FROM: Alida Kass, President & Chief Counsel
SUBJECT: A1215 – Forum Selection Clauses
DATE: March 7, 2019

The New Jersey Civil Justice Institute is comprised of many of New Jersey’s leading employers, as well as small businesses, individuals, not-for-profit groups. We advocate for a fair and predictable civil justice system, representing the interests of the business community on matters of law and legal policy, in the legislature and in the courts.

We appreciate the core concern that consumers should be able to resolve relatively low-dollar disputes quickly and easily and at a reasonably convenient location. However, we are concerned that the proposed legislation would generate unnecessary uncertainty regarding routine contractual arrangements, including the enforceability of forum selection clauses in federal court. The recently decided U.S. Supreme Court decision of *Atlantic Marine Construction Co., Inc. v. J-Crew Management, Inc.* continues to refine the analysis for forum selection agreements, and legislation creating a “right” to in-state resolution would run afoul of that analysis, confusing consumers and generating unnecessary litigation.

However, we believe the uncertainty could be mitigated to some degree with the following amendments:

1. A clarification that the New Jersey resident must be a party to the contract, in order to avoid needless litigation over the scope of the law.
2. An upper limit on the application of the statute, to better target relatively low-dollar disputes. Recognizing that the typical consumer dispute involves maybe hundreds of dollars, we propose \$75,000 as an upper limit that is more than fair. It would eliminate the conflict with federal courts, and likely would also ensure the legislation does not interfere with forum selection regarding real property. Litigation regarding real property is routinely conducted in the courts of the state where the real property is situated.
3. We also want to protect the option to resolve the dispute within the state of New Jersey without invalidating an entire clause for the technical failure of specifying New Jersey as the forum state. We also note that low-dollar disputes are typically resolved telephonically, which presumably also addresses the core concern.

Notwithstanding any contractual provision to the contrary, for any ~~A term or condition in~~
~~a~~ consumer contract **which includes a provision** concerning venue, forum, or jurisdiction

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involving a New Jersey resident party to the contract of this State is valid only if that term or condition requires that the dispute is resolved, the consumer shall have the option to resolve within the State of New Jersey, which shall include participating telephonically from New Jersey, any dispute where the aggregate amount in controversy, whether sought solely by the consumer or also on behalf of others, is less than \$75,000. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature on the contract.