



MEMORANDUM

TO: Members of the Assembly Consumer Affairs Committee
FROM: Anthony M. Anastasio, President
SUBJECT: A5240 – Forum Selection Clauses
DATE: February 8, 2021

The New Jersey Civil Justice Institute (“NJCJI”) is a nonpartisan advocacy group comprised of many of New Jersey’s largest employers, as well as small businesses and not-for-profit organizations. NJCJI advocates for a fair and predictable civil justice system in New Jersey, which is an essential ingredient for job creation and economic growth in our state. NJCJI appreciates the sentiment that New Jersey consumers should be able to resolve relatively low-dollar disputes at a convenient location. However, NJCJI is concerned that A5240 could generate legal uncertainty regarding otherwise routine contractual arrangements. This uncertainty could be mitigated with the following amendments to A5240, set forth below along with proposed language:

1. A clarification that a New Jersey resident must be an actual party to the consumer contract, in order to avoid needless litigation over the scope of the law.
2. An upper limit on the application of the law, to better target low-dollar consumer disputes. Recognizing that the typical consumer dispute involves hundreds of dollars, we propose \$15,000 as an upper limit that is more than fair and corresponds to the monetary threshold of the Special Civil Part of the New Jersey Superior Court, Law Division.
3. A clarification that would provide the option to resolve a 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 law’s core concern.

Notwithstanding any contractual provision to the contrary, for any ~~A term or condition in a consumer contract that includes a provision concerning venue, forum, or jurisdiction involving and involves a New Jersey resident as a 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 \$15,000 or less.** This requirement may only be waived upon the advice of counsel as evidenced by counsel’s signature on the contract.