

CORPORATE ALERT

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[New Wave of Class Actions Target Businesses Dealing with Consumers](#)

A recent uptick in class action lawsuits under the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14, et seq. (“TCCWNA”) has businesses offering products or services to New Jersey consumers scrambling to reevaluate their contracts, website terms and other consumer-targeted literature.

The statute makes it illegal in New Jersey for a business to enter into an agreement with a consumer or even provide a notice to a consumer if the agreement or notice contains any term which violates a legal right of the consumer or responsibility of the business. While such a prohibition may not immediately appear problematic, contracts and notices are often drafted broadly in order to provide the broadest possible protection against liability and are intended to apply to consumers across state and national lines subject to a variety of different laws. Generally, concerns about unenforceability of broad provisions are dealt with through the use of a severability clause providing that if a provision is not enforceable in a particular jurisdiction, it will be enforced to the maximum extent permitted by law or deleted from the agreement without affecting the remainder of the contract. However, TCCWNA also prohibits the consumer contract or notice from stating that some of its provisions may be unenforceable without specifying which provisions are not enforceable in New Jersey – eradicating any protection offered by a severability clause.

TCCWNA claims are particularly burdensome for businesses because they allow a consumer to bring a claim without having to show any actual damages. Instead, the consumer only has to identify the violating language. The statute imposes a penalty on offending businesses of not less than \$100 or actual damages, or both, at the election of the consumer. In addition, the statute allows the consumer to recoup attorneys’ fees and court costs from the company. In a class action setting, the minimum penalties, which are assessed per violation and per class action plaintiff, can quickly add up to hefty sums and can be imposed irrespective of whether the plaintiff consumers relied on or were damaged by the violating provisions.

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The statute has recently been used by class action attorneys to challenge standard provisions in a variety of consumer-facing agreements. The following provisions have been attacked as violating TCCWNA in class action claims that have survived summary judgment:

- An indemnity requiring a consumer to indemnify a self-storage company for losses arising from the consumer's use of the facility, but failing to exclude from the indemnity losses caused by the company's negligence.
- A provision releasing a business from all losses or damages to the consumer's property or injuries caused by the business' acts or omissions (other than the company's fraud, willful injury or willful violation of law).
- A provision shortening the time during which a consumer can bring a claim against a business arising out of the agreement.
- Provisions beginning with, "To the extent permitted by law..."

These recent class action suits highlight the importance of reviewing contracts and other consumer-facing literature, including online terms of use and privacy policies, on a regular and ongoing basis as a means of staying current with changing legal standards and minimizing litigation risk to the business.

If you have any questions about this Alert:

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