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RULE ADOPTIONS

Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > OFFICE OF THE DIRECTOR

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:44D-1.1, 4.1 through 4.4, 4.6, and 4.17

Text

Public Movers and Warehousemen--Video Estimates, Liability, and Brochures

Proposed: April 20, 2020, at 52 N.J.R. 868(a) (See also, 52 N.J.R. 2093(a) and 53 N.J.R. 1078(a)).

Adopted: November 3, 2021, by the Division of Consumer Affairs, Sean Neafsey, Acting Director.

Filed: November 8, 2021 as R.2021 d.141, **without change, but with the proposed amendments at N.J.A.C. 13:44D-4.15 not adopted.**

Authority: N.J.S.A. 45:14D-6.

Effective Date: December 6, 2021.

Expiration Date: October 4, 2024.

Summary of Public Comments and Agency Responses:

The official comment period ended July 21, 2021. The Division received comments from the following individuals:

1. Bob Russo, Executive Director, New Jersey Warehousemen and Movers Association
2. Stephan Lowy, CEO, Lowy's Moving Service

3. Thomas Kilduff, President, New Jersey Warehousemen and Movers Association
4. Ricardo Ribeiro, President, Bluebell Relocation Services, LLC.
5. Helen Kal, Morrissey's Moving Co.
6. Fred Klag, HCB Distribution
7. Joseph Liantonio, Vice President, Flatbush Moving Van Co.
8. Sai Dattani, President, Universal Relocations Inc.
9. Lisa Kirk, President, Payless Moving Inc.
10. Stephen Seligson Vice President, Sales, Molloy Bros. Moving & Storage
11. Suely D'Andrea Vera, Director of Customer Service, Loss Prevention/Quality Control, Freedom Moving and Storage
12. William F. Kral, President, BK Movers LLC
- 13 Keith Woetzel-President, Paramus Moving Inc.
14. Ciarla Flood, Jersey Shore Moving & Storage, Inc.
15. Donald Lusardi, Jr., President/Owner, The Liberty Group
16. Jim Mahon Moving & Trucking, Inc.
17. Joe Stephenson, General Manager, Relocation Express Moving and Storage
18. Russ Chandler, Atlantic Coast Moving and Storage
19. Charles Cedervall, Able Metro Moving and Storage
20. Mike Sandford, VP Business Development, Bohrens Companies
- 21 Chuck Smiley, All Seasons Movers, Inc.
22. Karen Robbie, All Seasons Movers, Inc.
23. Tom Torcomian, C.O.O., Budd Van Lines
24. Joseph Indelicato, Sole Member/Owner, Delicato Transport, LLC, Moving & Storage
25. James S. Simpson, Chairman, Victory Worldwide Transportation, Inc.
26. James E. Simonik, President, Simonik Moving & Storage
27. True State moving Services, Inc.
28. Tim Woodhull, Owner, Peers Moving Co., Inc.
29. Jonathan Flood, Jersey Shore Moving & Storage Inc.

30. Kevin Ross
31. Douglas Padla, Booth Movers, Ltd
32. Adam D. Padla, President, Managing Partner, Booth Movers, Ltd.
33. Zoltan Puskas, President, Jersey Moving Pro
34. Jonathan Flood, Jersey Shore Moving & Storage, Inc.
35. Cynthia A. Myer, President, WBENC, certified woman owned business, Ridgewood Moving Services, Co.
36. Robert B. Kandetzke, President, Simonik Transportation and Warehousing Group
37. George W. Wright, George W. Wright & Associates, LLC
38. Lisa J. McColley, Principal, Ideal Way Movers, Inc.
39. Debbie Love, T.S. Van Lines, Inc.
40. Isaac King, Brantley Bros., President
41. Mark A. Dorschug, Interstate Operations Manager, Simonik Transportation & Warehousing Group, LLC
42. Joseph J. Branco III, General Manager, Aron Movers, Inc.
43. Guy Drori, President/CEO, BestGuy Moving Services
44. Brian Carton, Vice President, J.D. Carton & Son, Inc.
45. Peter B. Ferraro, President, Peter Ferraro & Sons Moving & Storage
46. Julie Cabrera, GM, White Glove Moving & Storage, Inc.
47. Ted Froehlich, CEO, Bohren's
48. Margaret Sopko-McConnell, President and CEO, Sopko Moving & Storage, Inc.
49. Tracy Denora, Executive Director, New Jersey Warehousemen & Movers Association
50. Mike Jenkins, President, Anchor Moving & Storage
51. Tara McQuaid-Dixon, V.P. Sales & Business Development, Sea Cure Moving, Inc.

1. COMMENT: The commenters support all of the amendments, except for N.J.A.C. 13:44D-4.15.

RESPONSE: The Director thanks the commenters for their support.

2. COMMENT: Commenters contend that the amendments at N.J.A.C. 13:44D-4.15(d) will have a negative impact on licensees, in that they will make licensees liable for items packed by consumers. The commenters also contend that such liability would not reduce complaints or damage claims and that

liability insurance only covers goods that are under the care, custody, and control of a licensee. One commenter contends that making licensees responsible for consumer packed items is contrary to industry practices in moving and shipping. The commenters further contend that the proposed amendments will impose costs on consumers if a licensee refuses to transport improperly packed items. Consumers would need to pay a fee to unpack and repack such items or a fee to transport them in an alternate manner. Several commenters are concerned that consumers do not have the expertise to properly pack their goods. Another commenter opposes the adoption of the amendments at N.J.A.C. 13:44D-4.15(d) but recommends that, if the rule is adopted, it be amended to include two new provisions. The first provision would state that a licensed public mover could offer to transport containers packed by a consumer if the consumer signs a written waiver releasing the licensed public mover from liability for damages to any items packed by the consumer. The second provision would state that the rules do not supersede or modify existing statutory or common law burdens or defenses that apply to consumers or licensed public movers and/or warehousemen. Another commenter is concerned that proposed amendments at N.J.A.C. 13:44D-4.15(d) will increase costs for a move because making movers liable for items packed by consumers will lead movers to charge more for a move to ensure that they have the resources to reimburse consumers for damages to goods caused by the negligent packing by consumers. The commenter contends that these increased costs will lead consumers either to use unlicensed, rogue movers or move items by themselves. Two commenters contend that proposed amendments at N.J.A.C. 13:44D-4.15(d) will cause consumers to file complaints with the Division or on social media if licensed public movers refuse to transport goods that have been packed by consumers.

RESPONSE: The Director of the Division believes that reducing potential disputes between customers and licensees would have a potential positive economic impact and that new N.J.A.C. 13:44D-4.15(d) may have the effect of reducing such disputes. However, the Director understands that this potential benefit of proposed new N.J.A.C. 13:44D-4.15(d) could be outweighed if licensees decide to increase the cost of a move or refuse to conduct a move because consumers have packed their [page=2049] goods, as indicated by the comments summarized above. In order to avoid such a negative impact on consumers, the Director will not adopt N.J.A.C. 13:44D-4.15(d).

3. COMMENT: A commenter assumes that N.J.A.C. 13:44D-4.15 was originally adopted to protect licensees from fraudulent claims by consumers. The commenter is concerned that the amendments to N.J.A.C. 13:44D-4.15(d) create an opportunity for consumers to report fraudulent claims. The commenter claims it would be unfair to make licensees liable for damage when they cannot verify that an item was not damaged prior to a move.

RESPONSE: The commenter is incorrect as to the reason N.J.A.C. 13:44D-4.15 was originally adopted. The rule was not intended to protect licensees; rather, it establishes when a licensee is liable for physical loss, destruction, or damages to articles damaged during transit or storage in order to protect consumers. Nevertheless, as discussed above, the Director is not adopting N.J.A.C. 13:44D-4.15(d).

4. COMMENT: N.J.A.C. 13:44D-4.15(a)1 provides that a licensed public mover and/or warehouseman is exempt for damages to a consumer's goods that occurred during transit or storage if the damage was caused by, or was the result of, the consumer's negligence. Proposed amendments to this rule would revise this exemption so that it would apply only if the damage was caused prior to the move. Several commenters oppose these proposed amendments. Some of the commenters contend it is difficult to handle poorly constructed items that are designed to be transported disassembled. The commenters believe that licensed public movers and/or warehousemen should not be liable for such items falling apart during a

move and ask the Director to not adopt the proposed amendments. Two commenters oppose the proposed amendments at N.J.A.C. 13:44D-4.15(a)1, as they would be inconsistent with the common law "act of shipper" defense to claims for damages. Under this defense, a carrier has to show that any damages were proximately caused by the consumer. The commenters contend that the proposed amendments to N.J.A.C. 13:44D-4.15(a)1 would increase a licensed public mover's liability for consumer-caused damages. The commenters point out that existing N.J.A.C. 13:44D-4.15(a)1 focuses on the causation of damages, not the timing of damages. The commenters contend that N.J.S.A. 45:14D-1 et seq., authorizes the Division to adopt regulations that protect consumers and does not authorize regulations that deprive licensed public movers of common law rights and defenses. The commenters contend that the changes at N.J.A.C. 13:44D-4.15(a)1 are unnecessary as judicial precedents establish that a licensed public mover is liable for damages to goods if the licensed public mover cannot meet the heavy burden of proving that damages were caused by a consumer.

RESPONSE: The proposed amendments at N.J.A.C. 13:44D-4.15(a)1 could make a licensed public mover and/or warehouseman liable for damages to goods that were not caused by the licensed public mover and/or warehouseman. Therefore, the Director has determined not adopt the proposed amendments at N.J.A.C. 13:44D-4.15(a)1.

5. COMMENT: N.J.A.C. 13:44D-4.15(b) places the burden on licensed public movers and/or warehousemen to prove that they are not liable for damages, unless a consumer, in a signed and notarized writing, agrees that a licensed public mover and/or warehouseman is not liable. A commenter contends that a waiver cannot be notarized at the time of loading a shipment and a waiver can only be certified by the consumer at that time. While the commenter contends that none of the proposed amendments at N.J.A.C. 13:44D-4.15 should be adopted; the commenter recommends that, if they are adopted, N.J.A.C. 13:44D-4.15(b) be amended upon adoption to require that a signed writing be either notarized or certified. Several commenters oppose the proposed amendments at N.J.A.C. 13:44D-4.15(b), as the proposed amendments would prevent a licensed public mover and/or warehouseman from certifying that damages to consumers' goods were preexisting.

RESPONSE: The Director points out that the notarization requirements at N.J.A.C. 13:44D-4.15(b) is an existing requirement. The Director does not believe it is appropriate to make the substantive change of removing the notarization requirement at this time. The Director also notes that there have not been indications that licensees have difficulty meeting the notarization requirement at N.J.A.C. 13:44D-4.15(b). If it becomes apparent at a later date that licensees cannot meet this requirement, the Director will revisit this issue to determine if it is appropriate to amend the rule, as the commenter recommends. The Director points out that proposed amendments at N.J.A.C. 13:44D-4.15(b) do not prevent a licensed public mover and/or warehouseman from certifying that damages to consumers' goods were preexisting. The proposed amendments clarify that a licensed public mover and/or warehouseman is required to establish that damages to consumers' goods are not the responsibility of the licensed public mover and/or warehouseman due to exceptions set forth at N.J.A.C. 13:44D-4.15(a).

Federal Standards Statement

As the adopted amendments apply solely to intra-State moves, a Federal standards analysis is not required because there are no applicable Federal laws or standards.

Full text of the adoption follows:

SUBCHAPTER 1. DEFINITIONS

13:44D-1.1 Words and phrases defined

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

...

"Brochure" means an informational booklet to be provided to each prospective consumer by the public mover and/or warehouseman, either in a printed or digital format.

...

SUBCHAPTER 4. GENERAL PROVISIONS

13:44D-4.1 Forms

(a)-(c) (No change.)

Recodify existing (e)-(i) as (d)-(h) (No change in text.)

13:44D-4.2 Moving contract: non-binding estimate

(a) Prior to entering into a contract to render services based on a non-binding estimate, every public mover shall issue the following to each consumer at least 24 hours prior to the date of the move:

1. Either a printed version of the brochure entitled "Important Notice to Consumers Using Public Movers and Warehousemen," which is found at N.J.A.C. 13:44D Appendix and is incorporated herein by reference or a link to a digital version of the brochure on the Division of Consumer Affairs' website; and

2. A fully completed written estimate, entitled "Estimated Cost of Service for Moving or Warehousing -- Non-Binding," which meets the requirements of (b) below, rendered after an inspection of the premises and the goods to be moved by the public mover, performed either physically on-site or through electronic communications which include a video component. A public mover and/or warehouseman may employ an estimator to perform the inspection; however, no public mover and/or warehouseman shall employ an estimator who also represents any other public mover and/or warehouseman.

(b) (No change.)

(c) The public mover and the consumer shall enter into a contract at least 24 hours prior to the move by completing an order for service form. The order for service form, entitled "Order for Service with Non-Binding Estimate," shall include:

1.-3. (No change.)

4. The following information:

i. (No change.)

ii. The following statement, in boldface and at least 14 point font size: "Any estimate of charges previously furnished by the public mover is not a guarantee or representation that the actual charges will

not be more or less than the amount of the estimate. The consumer acknowledges either receipt of the printed brochure entitled 'Important Notice to Consumers Using Public Movers and Warehousemen' as ordered by the Director of the New Jersey Division of Consumer Affairs or receipt of a link to a digital version of the brochure on the Division of Consumer Affairs' website."; and

iii. (No change.)

5.-10. (No change.)

(d)-(h) (No change.)

[page=2050] 13:44D-4.3 Moving contract: binding estimate

(a) A public mover who is offering a binding estimate shall furnish the binding estimate in writing to the consumer or other person responsible for payment of the charges for the mover's services. A binding estimate shall be furnished only after an inspection of the premises and the goods to be moved, performed either physically on-site or through electronic communications, which include a video component. The binding estimate shall be signed by the public mover and the consumer and a copy of the binding estimate shall be retained by the public mover and attached as an addendum to the bill of lading. A binding estimate shall clearly describe the property to be moved and all services to be provided.

(b) Prior to contracting to provide services pursuant to a binding estimate, every public mover shall issue to the consumer, at least 24 hours prior to the date of the move:

1. Either a printed version of the brochure entitled "Important Notice to Consumers Using Public Movers and Warehousemen," which is found at N.J.A.C. 13:44D Appendix or a link to a digital version of the brochure on the Division of Consumer Affairs' website;

2.-3. (No change.)

(c) The order for service required by (b)3 above shall contain:

1.-3. (No change.)

4. The following information:

i. (No change.)

ii. The following statement, in boldface and at least 14 point font size: "The consumer acknowledges either receipt of the brochure entitled 'Important notice to Consumers Using Public Movers and Warehousemen,' as ordered by the Director of the New Jersey Division of Consumer Affairs or receipt of a link to a digital version of the brochure on the Division of Consumer Affairs' website."; and

iii. (No change.)

5.-9. (No change.)

(d)-(f) (No change.)

13:44D-4.4 Warehousemen entering into a contract to provide services

(a) Prior to entering into a contract to render services every warehouseman shall issue to each consumer:

1. Either a printed version of the brochure entitled "Important Notice to Consumers Using Public Movers and Warehousemen" which is found at N.J.A.C. 13:44D Appendix or a link to a digital version of the brochure on the Division of Consumer Affairs' website;

2.-4. (No change.)

13:44D-4.6 Legal liability

(a)-(c) (No change.)

(d) An order for service shall specifically state the public mover's and/or warehouseman's liability. Any limitation shall be null and void and the public mover and/or warehouseman shall be subject to full liability if any of the following occurs:

1. (No change.)

2. The public mover and/or warehouseman fails to provide the consumer with either a printed version of the brochure entitled "Important Notice to Consumers Using Public Movers" or a link to a digital version of the brochure on the Division of Consumer Affairs' website, in accordance with N.J.A.C. 13:44D-4.2(a), 4.3(b) or 4.4(a);

3.-4. (No change.)

13:44D-4.17 Short-notice move or warehousing

(a) (No change.)

(b) A public mover and/or warehouseman may only perform a short-notice move or warehousing if:

1.-3. (No change.)

4. The total cost to the consumer of the move or warehousing, including tips or gratuities, will not exceed \$ 1,000.

(c) (No change.)

(d) A public mover and/or warehouseman who performs a short-notice move shall obtain documentary proof that the consumer was evicted from the residence or office, had to move on account of a fire, had contracted with another mover for a move on that day, or that the cost of the move or warehousing did not exceed \$ 1,000. The public mover and/or warehouseman shall maintain this documentary evidence as part of his or her records for at least three years.

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