

ASSEMBLY, No. 207

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Hunterdon and Mercer)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Co-Sponsored by:

**Assemblywoman Oliver, Assemblyman Chivukula, Assemblywoman
McHose and Assemblyman Wimberly**

SYNOPSIS

Eliminates award of attorneys' fees, filing fees and costs of suit for technical violation of the consumer fraud act.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 9/23/2014)

1 AN ACT concerning the awarding of attorneys' fees in certain
2 actions and amending P.L.1971, c.247.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 7 of P.L.1971, c.247 (C.56:8-19) is amended to read
8 as follows:

9 7. a. Any person who suffers any ascertainable loss of moneys
10 or property, real or personal, as a result of the use or employment
11 by another person of any method, act, or practice declared unlawful
12 under this act or the act hereby amended and supplemented may
13 bring an action or assert a counterclaim therefor in any court of
14 competent jurisdiction. In any action under this section the court
15 shall, in addition to any other appropriate legal or equitable relief,
16 award threefold the damages sustained by any person in interest. In
17 all actions under this section, including those brought by the
18 Attorney General, the court shall also award reasonable attorneys'
19 fees, filing fees and reasonable costs of suit.

20 b. (1) Notwithstanding the provisions of subsection a. of this
21 section, attorneys' fees, filing fees, and reasonable costs of suit shall
22 not be awarded for a technical violation of P.L.1960, c.39 (C.56:8-1
23 et seq.).

24 (2) For the purposes of this section, "technical violation" means
25 any violation where the person held in violation made a good faith
26 effort to comply with P.L.1960, c.39 (C.56:8-1 et seq.) and the
27 resulting violation did not:

28 (a) impact the quality of the product or service provided; or

29 (b) result in an ascertainable loss to the consumer.

30 "Technical violation" shall not be construed to include a second or
31 subsequent violation of the same, or any similar, provision of
32 P.L.1960, c.39 (C.56:8-1 et seq.) provided the person has been
33 notified of the original violation and has had reasonable time and
34 opportunity to rectify any subsequent violations of the same or
35 similar nature.

36 (3) Nothing contained in this section shall be construed to in any
37 way prevent attorneys' fees, filing fess, and reasonable costs of suit
38 from being awarded in any action under this section brought by the
39 Attorney General, including for any violation determined to be a
40 technical violation.

41 (cf: P.L.1997, c.359, s.1)

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43 2. This act shall take effect immediately.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

STATEMENT

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This bill eliminates the award of attorneys' fees, filing fees, and costs of suit in cases of technical violations under the Consumer Fraud Act.

Under the Consumer Fraud Act, an individual who suffers an ascertainable loss of money or property as a result of another person's violation is entitled to reasonable attorneys' fees, filing fees, and costs of suit. Further, the State's courts have held that if a person can establish a violation of the act's accompanying regulations, that person is entitled to reasonable attorneys' fees, filing fees and reasonable costs of suit, even if there were no damages resulting from the violation.

This bill specifies that attorneys' fees, filing fees, and costs of suit are not to be awarded for a technical violation of the Consumer Fraud Act. The bill defines a technical violation as one in which the person held in violation made a good faith effort to comply with the provisions of the Consumer Fraud Act and the resulting violation did not impact the quality of the product or service provided or result in an ascertainable loss to the consumer. Under the bill, technical violations do not include a second or subsequent violations of the same or similar nature, provided the person has been notified of the original violation and has had reasonable time and opportunity to rectify others.

The bill also clarifies that its provisions in no way prevent attorneys' fees, filing fess, and reasonable costs of suit from being awarded in suits brought by the Attorney General, regardless of whether they are for technical violations.