

**SENATE, No. 2293**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED JUNE 30, 2014

**Sponsored by:**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Senator JEFF VAN DREW**

**District 1 (Atlantic, Cape May and Cumberland)**

**SYNOPSIS**

Revises individual cause of action under consumer fraud act.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning actions for consumer fraud, amending  
2 P.L.1971, c.247 and supplementing P.L.1960, c.39 (C.56:8-1 et  
3 seq.).

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

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

10 7. a. Any person who suffers any ascertainable loss of moneys  
11 or property, real or personal, **[as a result of]** because he was aware  
12 of and relied to his detriment on the use or employment by another  
13 person of any method, act, or practice declared unlawful under **[this**  
14 **act or the act hereby amended and supplemented]** P.L.1960, c.39  
15 (C.56:8-1 et seq.) may bring an action or assert a counterclaim  
16 therefor in any court of competent jurisdiction. In any action under  
17 this section the court **[shall]** may, in addition to any other  
18 appropriate legal or equitable relief, award up to threefold the actual  
19 damages sustained by any person in interest. In all actions under  
20 this section, including those brought by the Attorney General, the  
21 court shall also award reasonable attorneys' fees, filing fees and  
22 reasonable costs of suit.

23 b. Prior to bringing a suit alleging a violation of P.L.1960, c.39  
24 (C.56:8-1 et seq.), a person shall first serve a written demand on the  
25 seller demanding that the seller make the person whole. Failure to  
26 place the seller on notice of the claim will result in a loss of any  
27 right to secure threefold damages for any such violation.

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

32 (2) For the purposes of this section, "technical violation" means  
33 any violation in which the person held in violation acted in good  
34 faith and with no intent to defraud, and the resulting violation did  
35 not:

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

37 (b) result in an ascertainable loss to the person.

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

43 (3) Nothing contained in this section shall be construed to in any  
44 way prevent attorneys' fees, filing fees, and reasonable costs of suit

**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.

1 from being awarded in any action under this section brought by the  
2 Attorney General, including for any violation determined to be a  
3 technical violation.

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

5

6 2. (New section) The provisions of P.L.1960, c.39 (C.56:8-1 et  
7 seq.) shall:

8 a. apply only to New Jersey residents, or to transactions that  
9 take place in the State; and

10 b. not apply to actions or transactions otherwise permitted or  
11 regulated by the Federal Trade Commission or any other regulatory  
12 body or officer acting under statutory authority of this State or the  
13 United States.

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15 3. This act shall take effect immediately and shall apply to  
16 actions filed on or after the effective date.

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#### STATEMENT

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21 This bill makes various revisions to the New Jersey consumer  
22 fraud act.

23 Under current law, when a violation of the consumer fraud act is  
24 found to have occurred, the court is required to award threefold the  
25 damages sustained by any person in interest and attorneys' fees.  
26 This bill gives the court discretion in awarding damages, which  
27 would not be permitted to exceed threefold the actual damages  
28 sustained by the consumer. The bill provides that purely technical  
29 violations of the act do not allow for an award of attorneys' fees,  
30 filing fees and costs. The bill also provides that the plaintiff, in  
31 order to succeed in a consumer fraud action, must have been aware  
32 of, and relied to his detriment on, the use or employment of the  
33 unlawful method, act or practice. The bill also requires that a  
34 consumer serve a written demand on the seller for the seller to make  
35 the consumer whole, before filing suit.

36 In addition, the bill provides that the consumer fraud act applies  
37 only to New Jersey residents or transactions that take place within  
38 the State. The bill also provides that the consumer fraud act would  
39 not apply to actions or transactions otherwise permitted or regulated  
40 by the Federal Trade Commission or any other regulatory body or  
41 officer acting under statutory authority of this State or the United  
42 States.