

ASSEMBLY, No. 2796

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 8, 2016

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Assemblyman Space and Assemblywoman Phoebus

SYNOPSIS

Revises individual cause of action under consumer fraud act.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/28/2016)

A2796 WEBBER

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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)

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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,
27 which would not be permitted to exceed threefold the actual
28 damages sustained by the consumer. The bill provides that purely
29 technical violations of the act do not allow for an award of
30 attorneys' fees, filing fees and costs. The bill also provides that the
31 plaintiff, in order to succeed in a consumer fraud action, must have
32 been aware of, and relied to his detriment on, the use or
33 employment of the unlawful method, act or practice. The bill also
34 requires that a consumer serve a written demand on the seller for
35 the seller to make 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.