ASSEMBLY, No. 2414



STATE OF NEW JERSEY

218th LEGISLATURE



INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

“Free Means Free Act”; prohibits misleading advertising of free products.

CURRENT VERSION OF TEXT

 As introduced.



An Act concerning misleading advertising and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

 Be It Enacted by the Senate and General Assembly of the State of New Jersey:

 1. This act shall be known and may be cited as the “Free Means Free Act.”

 2. As used in this act:

 “Contracted service” means a service offered for sale or sold and agreed to in a contract between a provider and a person.

 “Product” means any device, equipment, item, or other product offered for sale or sold in this State, including products offered for sale or sold in conjunction with a contracted service.

 “Provider” means a person that sells or offers to sell a contracted service.

 “Ultimate cost” means the final cost of a product sold or offered for sale, or provided in conjunction with a contracted service, as a sum of all yearly, monthly, or otherwise divided or totaled payments, and including any shipping, activation, cancellation, return, or restocking fees associated with the product, and contracted service if applicable.

 3. a. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for a person to sell or offer for sale any product if the person fails to clearly and conspicuously disclose the ultimate cost of the product, including the ultimate cost after the assessment of any fees in the event that the person cancels or terminates a contracted service with a provider or returns the product to the seller or provider.

 b. A person shall clearly and conspicuously indicate, at the point of sale or contract agreement, the ultimate cost of any product offered for sale or sold by a person, including:

 (1) whether the cost of the product was offered by the seller or provider as free or at a reduced rate, as part of the sale or contract;

 (2) the retail value of the product and any associated subsidy offered by the seller or provider;

 (3) any cancellation fee to be assessed by the provider if the person cancels or terminates the contract, including, if applicable, any formula used to determine the total cancellation fee; and

 (4) any return or restocking fee to be assessed by the seller or provider if the person returns the product.

 4. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for a person to advertise any product as free, or offer for sale or sell any product at no cost, if the person: (1) assesses a return or restocking fee for the return of the product or another product sold in conjunction with the free product; (2) assesses a cancellation fee for early termination of a contracted service and the cancellation fee incorporates any actual value or cost of the product; or (3) includes any amount to cover the cost of the product within a bill regularly assessed to a person for the contracted service.

 5. This act shall take effect on the first day of the third month next following the date of enactment.

STATEMENT

 This bill, to be known as the “Free Means Free Act,” would prevent misleading advertising practices of contracted service providers and retailers, by prohibiting the advertising of any product as free, or offering for sale or selling any product at no cost, if it is not ultimately free.

 Specifically, the bill provides that it would be an unlawful practice for a person to advertise, offer, or sell free products if the person: (1) assesses a return or restocking fee for the return of the product or another product sold in conjunction with the free product; (2) assesses a cancellation fee for early termination of a contracted service and the cancellation fee incorporates any actual value or cost of the product; or (3) includes any amount to cover the cost of the product within a bill regularly assessed to a person for the contracted service.

 The bill also requires a person to clearly and conspicuously disclose the ultimate cost of any product, including the ultimate cost after any fees (e.g. cancellation or restocking fees) are assessed. Under the bill, the “ultimate cost” is defined to mean the final cost of a product sold or offered for sale, or provided in conjunction with a contracted service, as a sum of all yearly, monthly, or otherwise divided or totaled payments, and including any shipping, activation, cancellation, return, or restocking fees associated with the product, and contracted service if applicable.

 Under the bill, a person is required to clearly and conspicuously indicate the ultimate cost of the product at the point of sale or contract agreement, including:

 (1) whether the cost of the product was offered by the seller or provider as free or at a reduced rate, as part of the sale or contract;

 (2) the retail value of the product and any associated subsidy offered by the seller or provider;

 (3) any cancellation fee to be assessed by the provider if the person cancels or terminates the contract, including, if applicable, any formula used to determine the total cancellation fee; and

 (4) any return or restocking fee to be assessed by the seller or provider if the person returns the product.

 An unlawful practice under the consumer fraud act is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. Additionally, violations can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.