

ASSEMBLY, No. 1476

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Revises penalty provision of law concerning prohibition of certain unsolicited text messages.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning unsolicited text messages and amending
2 P.L.2014, c. (C.) (pending before the Legislature as
3 Assembly Bill No. 617 of 2014).

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

7
8 1. Section 5 of P.L.2014, c. (C.) (pending before the
9 Legislature as Assembly Bill No. 617 of 2014) is amended to read
10 as follows:

11 5. **[a.]** A person **[who violates this act]** in violation of section
12 2, 3, or 4 of P.L.2014, c. (C.) (pending before the Legislature
13 as Assembly Bill No. 617 of 2014) shall be subject to a civil penalty
14 **[in an amount not to exceed \$500 for the first violation and \$1,000**
15 **for each subsequent violation, collectible by the Attorney General**
16 **in]** of up to \$500 for a first offense, and up to \$1,000 for a second
17 offense, to be collected in a civil action by a summary proceeding
18 pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999,
19 c.274 (C.2A:58-10 et seq.).

20 **[b.** Nothing set forth in this act shall be construed as creating,
21 establishing or authorizing a private cause of action by an aggrieved
22 person against a person who has violated, or is alleged to have
23 violated, the provisions of this act] The Superior Court shall have
24 jurisdiction of proceedings for the enforcement of the penalty
25 provided by this section.

26 A third violation of section 2, 3, or 4 of P.L.2014, c. (C.)
27 (pending before the Legislature as Assembly Bill No. 617 of 2014)
28 is an unlawful practice under P.L.1960, c.39 (C.56:8-1 et seq.), and
29 for the purposes of this section shall be considered a first offense
30 under P.L.1960, c.39 (C.56:8-1 et seq.).

31 A fourth or subsequent violation of section 2, 3, or 4 of
32 P.L.2014, c. (C.) (pending before the Legislature as
33 Assembly Bill No. 617 of 2014) is an unlawful practice under
34 P.L.1960, c.39 (C.56:8-1 et seq.), and for the purposes of this
35 section shall be considered a subsequent offense under P.L.1960,
36 c.39 (C.56:8-1 et seq.).

37 (cf: P.L.2014, c. , s.5, pending before the Legislature as Assembly
38 Bill No. 617 of 2014).

39
40 2. This act shall take effect immediately but in no event shall
41 be effective prior to the effective date of P.L.2014, c. (C.)
42 (pending before the Legislature as Assembly Bill No. 617 of 2014).

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

This bill changes the penalties for a violation of the law prohibiting certain unsolicited text messages, enacted as Assembly Bill No. 617 of 2014.

Under this law, no person may send an unsolicited advertisement via text message to a communication device capable of receiving text messages if the recipient of the message may incur a telecommunications charge or a usage allocation deduction as a result of the message being sent. The law further prohibits the sending of unsolicited advertising via text message without first obtaining the permission of the recipient. A person violating these provisions is subject to a civil penalty in an amount not to exceed \$500 for a first violation and \$1,000 for any subsequent violation.

This bill revises the penalty provision to make first and second violations subject to civil penalties of up to \$500 and \$1,000, respectively, and to provide that any subsequent violation is an unlawful practice under the consumer fraud act (CFA), P.L.1960, c.39 (C.56:8-1 et seq.). The bill specifies that a third violation would be considered a first offense under the CFA, with a fourth or additional violation considered a subsequent offense under the CFA.

An unlawful practice under the CFA 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 may 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.

As introduced and passed by both chambers of the Legislature, Assembly Bill No. 617 of 2014 supplemented the CFA and violations of its provisions were unlawful practices under the CFA. Subsequently, Assembly Bill No. 617 was conditionally vetoed by the Governor. In the recommendations for reconsideration, the Governor proposed removing the bill's provisions from the CFA, and the penalties set forth thereunder.

This bill is a compromise, by creating a two-tiered penalty structure. This bill intends to provide balance by establishing civil penalties for first and second violations and requiring the enhanced penalties of the CFA for subsequent violations.