

SENATE, No. 4237

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 2, 2021

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Updates certain notice requirements for actions alleging consumer fraud violations and adds indirect purchasers as parties who can receive damages for antitrust violations.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning claims alleging violations of consumer fraud or
2 antitrust, and amending various sections of the statutory law.

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

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7 1. Section 2 of P.L.1960, c.39 (C.56:8-2) is amended to read as
8 follows:

9 2. The act, use or employment by any person of any
10 **【unconscionable】** commercial practice that is unconscionable,
11 abusive or unfair, or that violates State or federal law, deception,
12 fraud, false pretense, false promise, misrepresentation, or the
13 knowing, concealment, suppression, or omission of any material
14 fact with intent that others rely upon such concealment,
15 suppression or omission, in connection with the sale or
16 advertisement of any merchandise or real estate, or with the
17 subsequent performance of such person as aforesaid, whether or not
18 any person has in fact been misled, deceived or damaged thereby,
19 is declared to be an unlawful practice; provided, however, that
20 nothing herein contained shall apply to the owner or publisher of
21 newspapers, magazines, publications or printed matter wherein
22 such advertisement appears, or to the owner or operator of a radio
23 or television station which disseminates such advertisement when
24 the owner, publisher, or operator has no knowledge of the intent,
25 design or purpose of the advertiser.

26 (cf: P.L.1975, c.294, s.1)

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28 2. Section 8 of P.L.1971, c.247 (C.56:8-20) is amended to read
29 as follows:

30 8. Any party to an action asserting a claim, counterclaim or
31 defense based upon violation of this act, or the act hereby amended
32 or supplemented, shall electronically mail to a dedicated address or
33 account established by the Attorney General for this purpose a copy
34 of (i) the initial **【or】**, responsive or amended pleading containing
35 the claim, counterclaim or defense and any dispositive motion on
36 such claim, counterclaim or defense, with any accompanying brief
37 or legal memoranda, and (ii) any Appellate Civil Case Information
38 Statements or appellate brief relating to such a claim, counterclaim
39 or defense to the Attorney General within **【10 days】** 24 hours after
40 the filing of such pleading or document with the court. Upon
41 application to the court wherein the matter is pending, the Attorney
42 General shall be permitted to intervene or to appear in any status
43 appropriate to the matter.

44 (cf: P.L.1971, c.247, s.8)

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 3. Section 12 of P.L.1970, c.73 (C.56:9-12) is amended to read
2 as follows:

3 12. a. Any person who shall be injured in his business or
4 property by reason of a violation of the provisions of **【this act】**
5 P.L.1970, c.73 (C.56:9-1 et seq.) may sue therefor and shall recover
6 a sum of not less than \$1,000 or threefold the damages sustained by
7 him and interest on the damages from date of complaint, whichever
8 amount is greater, together with reasonable attorneys' fees, filing
9 fees and reasonable costs of suit; provided that indirect purchasers
10 injured by an illegal overcharge shall be entitled to recover only
11 compensatory damages, together with reasonable attorneys' fees,
12 filing fees, and reasonable costs of suit in actions not brought under
13 subsection b. of this section. Reasonable costs of suit may include,
14 but shall not be limited to the expenses of discovery and document
15 reproduction.

16 b. The State and any of its political subdivisions and public
17 agencies shall be deemed a person within the meaning of this
18 section. The Attorney General, on behalf of the State or any of its
19 political subdivisions or public agencies, or the political subdivision
20 or public agency at the direction of or with the permission of the
21 Attorney General, may institute an action to recover the damages
22 provided for by this section or by any comparable provisions of
23 Federal law, together with reasonable attorneys' fees, filing fees
24 and reasonable costs of suit.

25 c. In any action pursuant to P.L.1970, c.73 (C.56:9-1 et seq.),
26 the fact that the State, or any political subdivision or public agency
27 of the State or any political subdivision, or any person who has
28 sustained damages by reason of violation of P.L.1970, c.73 (C.56:9-
29 1 et seq.), has not dealt directly with the defendant shall not bar or
30 otherwise limit recovery except as provided in this section. In any
31 action or actions in which claims are asserted against a defendant
32 by both direct and indirect purchasers, the court may take such steps
33 as the court deems appropriate to avoid duplicate recovery of
34 damages and to obtain substantial fairness. In any action in which
35 both direct and indirect purchasers are involved, a defendant shall
36 be entitled to prove as a partial or complete defense to a claim for
37 damages that the illegal overcharge has been passed on to others
38 who are themselves entitled to recover, so as to avoid duplication of
39 recovery of damages.

40 d. In the event damages in a class action or an action instituted
41 by the Attorney General remain unclaimed by, or undistributed to,
42 the direct or indirect purchasers, the class representative or the
43 Attorney General, as applicable, the Attorney General may apply to
44 the court and such funds shall escheat to the State upon showing
45 that reasonable efforts made by the State to distribute the funds
46 have been unsuccessful.

47 (cf: P.L.1970, c.73, s.12)

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