

# SENATE, No. 901

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JANUARY 27, 2022

**Sponsored by:**  
**Senator NELLIE POU**  
**District 35 (Bergen and Passaic)**

### **SYNOPSIS**

Updates 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.



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

3

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

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

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27 2. Section 4 of P.L.1960, c.39 (C.56:8-4) is amended to read as  
28 follows:

29 4. a. To accomplish the objectives and to carry out the duties  
30 prescribed by this act, the Attorney General, in addition to other  
31 powers conferred upon him by this act, may issue subpoenas to any  
32 person, administer an oath or affirmation to any person, conduct  
33 hearings in aid of any investigation or inquiry, promulgate such  
34 rules and regulations, and prescribe such forms as may be  
35 necessary, which shall have the force of law.

36 b. In an action brought by the Attorney General, any commercial  
37 practice that violates State or federal law is conclusively presumed  
38 to be an unlawful practice under section 2 of P.L.1960, c.39  
39 (C.56:8-2).

40 (cf: P.L.1960, c.39, s.4)

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42 3. Section 8 of P.L.1971, c.247 (C.56:8-20) is amended to read  
43 as follows:

44 8. Any party to an action asserting a claim, counterclaim or  
45 defense based upon violation of this act, or the act hereby amended

**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 or supplemented, shall electronically mail to a dedicated address or  
2 account established by the Attorney General for this purpose a copy  
3 of (i) the initial **【or】**, responsive or amended pleading containing  
4 the claim, counterclaim or defense and any dispositive motion on  
5 such claim, counterclaim or defense, with any accompanying brief  
6 or legal memoranda, and (ii) any Appellate Civil Case Information  
7 Statements or appellate brief relating to such a claim, counterclaim  
8 or defense to the Attorney General within **【10 days】** 24 hours after  
9 the filing of such pleading or document with the court. Upon  
10 application to the court wherein the matter is pending, the Attorney  
11 General shall be permitted to intervene or to appear in any status  
12 appropriate to the matter.  
13 (cf: P.L.1971, c.247, s.8)

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

17 12. a. Any person who shall be injured in his business or  
18 property by reason of **【a】** anticompetitive conduct in violation of  
19 the provisions of **【this act】** P.L.1970, c.73 (C.56:9-1 et seq.) may  
20 sue therefor and shall recover a sum of not less than \$1,000 or  
21 threefold the damages sustained by him and interest on the damages  
22 from date of complaint, whichever amount is greater, together with  
23 reasonable attorneys' fees, filing fees and reasonable costs of suit;  
24 provided that indirect purchasers injured by an illegal overcharge  
25 shall be entitled to recover only compensatory damages, together  
26 with reasonable attorneys' fees, filing fees, and reasonable costs of  
27 suit in actions not brought under subsection b. of this section.  
28 Reasonable costs of suit may include, but shall not be limited to the  
29 expenses of discovery and document reproduction.

30 b. The State and any of its political subdivisions and public  
31 agencies shall be deemed a person within the meaning of this  
32 section. The Attorney General, on behalf of the State or any of its  
33 political subdivisions or public agencies, or the political subdivision  
34 or public agency at the direction of or with the permission of the  
35 Attorney General, may institute an action to recover the damages  
36 provided for by this section or by any comparable provisions of  
37 Federal law, together with reasonable attorneys' fees, filing fees  
38 and reasonable costs of suit.

39 c. In any action pursuant to P.L.1970, c.73 (C.56:9-1 et seq.),  
40 the fact that the State, or any political subdivision or public agency  
41 of the State or any political subdivision, or any person who has  
42 sustained damages by reason of violation of P.L.1970, c.73 (C.56:9-  
43 1 et seq.), has not dealt directly with the defendant shall not bar or  
44 otherwise limit recovery except as provided in this section. In any  
45 action or actions in which claims are asserted against a defendant  
46 by both direct and indirect purchasers, the court may take such steps  
47 as the court deems appropriate to avoid duplicate recovery of  
48 damages and to obtain substantial fairness. In any action in which

1 both direct and indirect purchasers are involved, a defendant shall  
2 be entitled to prove as a partial or complete defense to a claim for  
3 damages that the illegal overcharge has been passed on to others,  
4 including the defendant, who are themselves entitled to recover, so  
5 as to avoid duplication of recovery of damages.

6 d. In the event damages in a class action or an action instituted  
7 by the Attorney General remain unclaimed by, or undistributed to,  
8 the direct or indirect purchasers, the class representative or the  
9 Attorney General, as applicable, the Attorney General may apply to  
10 the court and such funds shall escheat to the State upon showing  
11 that reasonable efforts made by the State to distribute the funds  
12 have been unsuccessful.

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

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15 5. Sections 1, 2, and 4 of this act shall take effect immediately  
16 and section 3 shall take effect on the first day of the third month  
17 next following enactment.

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#### STATEMENT

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22 This bill updates various provisions of the consumer fraud act  
23 and the “New Jersey Antitrust Act,” in part to enhance the  
24 enforcement authority of the Division of Consumer Affairs in the  
25 Department of Law and Public Safety.

26 Under the bill, language in the consumer fraud act on prohibited  
27 commercial practices is expanded to include commercial practices  
28 that are unconscionable or abusive. Additionally, the bill adds  
29 language to declare that in an action brought by the Attorney  
30 General, any commercial practice that violates State or federal law  
31 is conclusively presumed to be an unlawful practice under the  
32 consumer fraud act. The bill also adds language regarding the notice  
33 of private lawsuits based on violations of the consumer fraud act.  
34 Notice is to be sent electronically to a dedicated address established  
35 by the office of the Attorney General, and requires certain legal  
36 filings to be sent as part of the notice. The bill stipulates notice is to  
37 be sent to the Attorney General within 24 hours of filing rather than  
38 10 days, as is required under current law.

39 Lastly, the bill amends current State antitrust law by allowing  
40 parties, including municipalities and the State, who are harmed by  
41 anticompetitive conduct to file suit even if the alleged harmed party  
42 is an indirect purchaser who did not deal directly with the  
43 defendant. The bill also stipulates that a defendant is entitled to  
44 prove that as a partial or complete defense to a claim for damages,  
45 an illegal overcharge has been passed on to others, including the  
46 defendant, who are entitled to recover, so as to avoid duplicate  
47 recovery damages. The bill adds language to clarify that a person  
48 seeking treble damages may do so if there is an alleged violation of

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1 State antitrust law that demonstrates anticompetitive conduct.  
2 Moreover, the bill adds provisions stating that in the event damages  
3 awarded as a result of a class action or an action instituted by the  
4 Attorney General remain unclaimed or undistributed, the Attorney  
5 General may apply to the court and have such funds escheat to the  
6 State upon showing that reasonable efforts were made by the State  
7 to distribute the funds but were unsuccessful.