

[First Reprint]

**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 reported by the Senate Commerce Committee on February 10, 2022, with amendments.



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:

6

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)

26

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). <sup>1</sup>Nothing in this subsection shall be construed to restrict  
40 the scope of unlawful practices under section 2 of P.L.1960, c.39  
41 (C.56:8-2) in actions not brought by the Attorney General. <sup>1</sup>

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

43

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

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted February 10, 2022.

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

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

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

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

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

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

1 as the court deems appropriate to avoid duplicate recovery of  
2 damages and to obtain substantial fairness. In any action in which  
3 both direct and indirect purchasers are involved, a defendant shall  
4 be entitled to prove as a partial or complete defense to a claim for  
5 damages that the illegal overcharge has been passed on to others,  
6 including the defendant, who are themselves entitled to recover, so  
7 as to avoid duplication of recovery of damages.

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

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

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