

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1556

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 7, 2022

The Assembly Consumer Affairs Committee adopts amendments to Assembly Bill No. 1556.

As amended by the committee, this bill updates various provisions of the consumer fraud act and the “New Jersey Antitrust Act,” in part to enhance the enforcement authority of the Division of Consumer Affairs in the Department of Law and Public Safety.

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

Finally, the bill amends the current State antitrust law to allow parties, including municipalities and the State, who are harmed by anticompetitive conduct to file suit even if the alleged harmed party is an indirect purchaser who did not deal directly with the defendant. The bill also stipulates that a defendant is entitled to prove that as a partial or complete defense to a claim for damages, an illegal overcharge has been passed on to others, including the defendant, who are entitled to recover, so as to avoid duplicate recovery damages. The bill clarifies that a person seeking treble damages may do so if there is an alleged violation of State antitrust law that demonstrates anticompetitive conduct. Moreover, the bill states that in the event damages awarded as a result of a class action or an action instituted by the Attorney General remain unclaimed or undistributed, the Attorney General may apply to the court and have such funds escheat to the State upon showing that reasonable efforts were made by the State to distribute the funds but were unsuccessful.

This bill was pre-filed for introduction in the 2022-2023 session pending technical review. As amended, the bill includes the changes required by technical review, which has been performed.

As amended, this bill is identical to Senate Bill No. 901 (1R).

COMMITTEE AMENDMENTS

The committee amended the bill to:

1) update the type of commercial practice that is considered unlawful under the consumer fraud statute;

2) add language to the provision governing actions that may be taken by the Attorney General to stipulate that in an action brought by the Attorney General, any commercial practice that violates State or federal law is conclusively presumed to be an unlawful practice under the consumer fraud statute;

3) clarify that a violation of the New Jersey Antitrust Act that leads to a person injured in business or property is to be a violation as a result of anticompetitive conduct;

4) allow a defendant, in any action brought as a result of violations of the New Jersey Antitrust Act in which a direct and indirect purchaser is involved, to include themselves as a party who can claim damages for an illegal overcharge;

5) clarify that nothing in the bill is to be construed as restricting the range of unlawful practices included in the consumer fraud act for which private actions may be brought; and

6) change the effective date of the bill to reflect additional amendments made to the bill.