

56: 8-2

August 8, 1975

LEGISLATIVE HISTORY OF R. S. 56: 8-2
(1971 Amendment)

Laws 1971 c. 247 -- A2402
April 19, 1971 Introduced by Kean and others
May 6, 1971 Passed in Assembly
June 14, 1971 Passed in Senate
June 29, 1971 Approved, Chapter 247, 1971
No Statement
Not Amended during passage
Governor press releases 4/19/71 and
6/29/71 (copies enclosed)

No hearings or reports located

GC--Yes

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CHAPTER 247 LAWS OF N. J. 1971

APPROVED 6-29-71

ASSEMBLY, No. 2402

STATE OF NEW JERSEY

INTRODUCED APRIL 19, 1971

By Assemblymen KEAN, CAPUTO, WILSON, DENNIS, RINALDI, GOLDFARB, FIORE, VANDER PLAAT, RICHARDSON, THOMAS, FORAN, LITTELL, AZZOLINA, COLEMAN and DAWES

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning consumer fraud, amending and supplementing chapter 39 of the laws of 1960, and amending chapter 39 of the laws of 1966 and chapter 97 of the laws of 1967.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 2. The act, use or employment by any person of any *unconscion-*
4 *able commercial practice*, deception, fraud, false pretense, false
5 promise, misrepresentation, or the knowing, concealment, suppres-
6 sion, or omission of any material fact with intent that others rely
7 upon such concealment, suppression or omission, in connection with
8 the sale or advertisement of any merchandise or with the subse-
9 quent performance of such person as aforesaid, whether or not
10 any person has in fact been misled, deceived or damaged thereby,
11 is declared to be an unlawful practice; provided, however, that
12 nothing herein contained shall apply to the owner or publisher of
13 newspapers, magazines, publications or printed matter wherein
14 such advertisement appears, or to the owner or operator of a radio
15 or television station which disseminates such advertisement when
16 the owner, publisher or operator has no knowledge of the intent,
17 design or purpose of the advertiser[; and provided, further, that
18 nothing herein contained shall apply to any advertisement which
19 is subject to and complies with the rules and regulations of, and
20 the statutes administered by the Federal Trade Commission].

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

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

3 8. Whenever it shall appear to the Attorney General that a
4 person has engaged in, is engaging in or is about to engage in any
5 practice declared to be unlawful by this act he may seek and obtain
6 in **[an]** *a summary* action in the Superior Court an injunction
7 prohibiting such person from continuing such practices or engag-
8 ing therein or doing any acts in furtherance thereof or an order
9 appointing a receiver, or both **[after appropriate notice to such**
10 **person]**. **[Such notice shall state generally the relief sought and**
11 **be served in accordance with section 5 of this act at least 3 days**
12 **prior to the institution of such action. In addition, the court may]**
13 *In addition to any other remedy authorized herein the court may*
14 *enjoin an individual from managing or owning any business or-*
15 *ganization within this State, and from serving as an officer, di-*
16 *rector, trustee, member of any executive board or similar governing*
17 *body, principal, manager, stockholder owning 10% or more of the*
18 *aggregate outstanding capital stock of all classes of any corpora-*
19 *tion doing business in this State, vacate or annul the charter of a*
20 *corporation created by or under the laws of this State, revoke the*
21 *certificate of authority to do business in this State of a foreign*
22 *corporation, and revoke any other licenses, permits or certificates*
23 *issued pursuant to law to such person [which] whenever such man-*
24 *agement, ownership, activity, charter authority license, permit or*
25 *certificate have been or may be used to further such unlawful prac-*
26 *tice. The court may make such orders or judgments as may be*
27 *necessary to prevent the use or employment by a person of any*
28 *prohibited practices, or which may be necessary to restore to any*
29 *person in interest any moneys or property, real or personal which*
30 *may have been acquired by means of any practice herein declared*
31 *to be unlawful.*

1 3. In addition to the assessment of civil penalties, the Attorney
2 General or his designee may, after a hearing as provided in P. L.
3 1967, c. 97 and upon a finding of an unlawful practice under this
4 act and the act hereby amended and supplemented, order that any
5 moneys or property, real or personal, which have been acquired
6 by means of such unlawful practice be restored to any person in
7 interest.

1 4. In assessing any penalty under this act and the act hereby
2 amended and supplemented, the Attorney General or his designee
3 may provide for the remission of all or any part of such penalty
4 conditioned upon prompt compliance with the requirements thereof
5 and any order entered thereunder.

1 5. Upon the failure of any person to comply within 10 days after
 2 service of any order of the Attorney General or his designee di-
 3 recting payment of penalties or restoration of moneys or property,
 4 the Attorney General may issue a certificate to the Clerk of the
 5 Superior Court that such person is indebted to the State for the
 6 payment of such penalty and the moneys or property ordered re-
 7 stored. A copy of such certificate shall be served upon the person
 8 against whom the order was entered. Thereupon the clerk shall
 9 immediately enter upon his record of docketed judgments the name
 10 of the person so indebted, and of the State, a designation of the
 11 statute under which the penalty is imposed, the amount of the
 12 penalty imposed and the amount of moneys ordered restored, a
 13 listing of property ordered restored, and the date of the certifica-
 14 tion. Such entry shall have the same force and effect as the entry
 15 of a docketed judgment in the Superior Court. Such entry, how-
 16 ever, shall be without prejudice to the right of appeal to the Ap-
 17 pellate Division of the Superior Court from the final order of the
 18 Attorney General or his designee.

1 6. Where the Attorney General or his designee, after a hearing
 2 as provided in P. L. 1967, c. 97, finds that an unlawful practice has
 3 been or may be committed, he may order the person committing such
 4 unlawful practice to cease and desist or refrain from committing
 5 said practice in the future. When it shall appear to the Attorney
 6 General that a person against whom a cease and desist order has
 7 been entered has violated said order, the Attorney General may
 8 initiate a summary proceeding in the Superior Court for the viola-
 9 tion thereof. Any person found to have violated a cease and desist
 10 order shall pay to the State of New Jersey civil penalties in the
 11 amount of not more than \$25,000.00 for each violation of said order.
 12 In the event that any person fails to pay a civil penalty assessed by
 13 the court for violation of a cease and desist order, the court assess-
 14 ing the unpaid penalty is authorized, upon application of the Attor-
 15 ney General, to grant any relief which may be obtained under any
 16 statute or court rule governing the collection and enforcement of
 17 penalties.

1 7. Any person who suffers any ascertainable loss of moneys or
 2 property, real or personal, as a result of the use or employment by
 3 another person of any method, act, or practice declared unlawful
 4 under this act or the act hereby amended and supplemented may
 5 bring an action or assert a counterclaim therefor in any court of
 6 competent jurisdiction. In any action under this section the court
 7 shall, in addition to any other appropriate legal or equitable relief,

8 award threefold the damages sustained by any person in interest.
 9 In all actions under this section the court shall also award reason-
 10 able attorneys' fees, filing fees and reasonable costs of suit.

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 mail a copy of the initial or responsive plead-
 4 ing containing the claim, counterclaim or defense to the Attorney
 5 General within 10 days after the filing of such pleading with the
 6 court. Upon application to the court wherein the matter is pending,
 7 the Attorney General shall be permitted to intervene or to appear
 8 in any status appropriate to the matter.

1 9. Section 1 of P. L. 1966, c. 39 (C. 56:8-13) is amended to read
 2 as follows :

3 1. Any person who violates any of the provisions of the act to
 4 which this act is a supplement shall, in addition to any other penalty
 5 provided by law, be liable to a penalty of not [less than \$50.00 or]
 6 more than [100.00] \$2,000.00 for the first offense and not [less than
 7 \$100.00 or] more than [\$250.00] \$5,000.00 for the second and each
 8 subsequent offense.

1 10. Section 2 of P. L. 1966, c. 39 (C. 56:8-14) is amended to read
 2 as follows :

3 2. Every county district court and municipal court shall have
 4 jurisdiction of proceedings for the collection and enforcement of a
 5 penalty imposed because of the violation, within the territorial
 6 jurisdiction of the court, of any provision of the act to which this
 7 act is a supplement. *Except as otherwise provided in this act* [The]
 8 the penalty shall be collected and enforced in a summary proceeding
 9 pursuant to the Penalty Enforcement Law (N. J. S. 2A:58-1, et
 10 seq.). Process shall be either in the nature of a summons or warrant
 11 and shall issue in the name of the State, upon the complaint of the
 12 Attorney General or any other person.

13 *In any action brought pursuant to this section to enforce any*
 14 *order of the Attorney General or his designee the court may, with-*
 15 *out regard to jurisdictional limitations, restore to any person in*
 16 *interest any moneys or property, real or personal, which have been*
 17 *acquired by any means declared to be unlawful under this act.*

18 *In the event that any person found to have violated any provision*
 19 *of this act fails to pay a civil penalty assessed by the court, the court*
 20 *may issue, upon application by the Attorney General, a warrant for*
 21 *the arrest of such person for the purpose of bringing him before the*
 22 *court to satisfy the civil penalty imposed.*

1 11. Section 1 of P. L. 1967, c. 97 (C. 56:8-3.1) is amended to read
2 as follows:

3 1. Upon receiving evidence of any violation of the provisions of
4 chapter 39 of the laws of 1960, the Attorney General, or [any assist-
5 ant designated by him for such purpose] *his designee*, is empowered
6 to hold hearings upon said violation and upon finding the violation
7 to have been committed, to assess a penalty against the person
8 alleged to have committed such violation in such amount within the
9 limits of chapter 39 of the laws of 1966 as the Attorney General
10 deems proper under the circumstances. Any such amounts collected
11 by the Attorney General shall be paid forthwith into the State
12 Treasury for the general purposes of the State.

1 12. This act shall take effect immediately.

A-2402

FROM THE OFFICE OF THE GOVERNOR

APRIL 19, 1971

FOR RELEASE:
IMMEDIATE

Amendments to the Consumer Fraud Act supported by the Cahill Administration were introduced today in the Legislature which will give New Jersey one of the strongest consumer protection laws in the nation.

Under the amendments, sponsored by Assemblyman Thomas H. Kean (R., Essex), the Attorney General would be given the authority to order the restitution of money or property after hearings have determined that they were acquired through unlawful means. In addition, the Attorney General will have the authority to issue cease and desist orders to prevent the continuation of unlawful practices. Violations of such an order would be subject to fines of not more than \$25,000 to be levied by the superior court.

Another amendment provides a private cause of action for injured persons and requires the court to award triple damages, reasonable attorneys' fees and reasonable costs of the suit. Stiffer fines are provided for by increasing the minimum penalty for a first offense from \$100 to \$2,000 and from \$250 to \$5,000 for subsequent offenses. In addition, the law is broadened to include "unconscionable commercial practices" in the definition of unlawful practices.

Assemblyman Kean said that the amendments represent an enlightened approach to provide greater protection for the consumer against fraud and to establish mechanisms within the Attorney General's office which will not only ease the burden on the courts but will provide consumers with relief.

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FROM THE OFFICE OF THE GOVERNOR

A-2402

FOR IMMEDIATE RELEASE: 6/29/71

Governor William T. Cahill signed into law a bill giving New Jersey one of the strongest consumer protection laws in the nation, and another which limits to \$50 the liability of an individual for unauthorized use of his credit cards.

Under Assembly Bill 2402, sponsored by Assemblyman Thomas Kean (R., Essex), the definition of consumer fraud is broadened, enforcement procedures are streamlined and penalties for violations are increased. The bill is part of the Administration's program to provide increased protection for consumers.

In signing the measure, Cahill expressed his appreciation to the members of the Legislature for their foresight and cooperation in passing the legislation. He added that this bill coupled with recent legislation which created a new Division of Consumer Affairs "gives New Jersey the enforcement power it needs to protect the consumer."

Maximum penalties for a first offense are increased from \$100 to \$2,000 and from \$250 to \$5,000 for subsequent offenses. In addition the Attorney General is given the administrative authority to seek restitution of money or property to a defrauded consumer.

The bill amends the Consumer Fraud Act to include "unconscionable consumer practices" as part of a definition of unlawful practices to cover exorbitant prices, unfair bargaining advantages and incomplete disclosures.

The Attorney General is empowered to enjoin the ownership or management of businesses used for unlawful practices and after a hearing to order that money acquired by unlawful means be restored to the consumer. The bill also provides that the Attorney General have hearing orders which are ignored, filed with the court as a judgment thus avoiding the need for further hearing or trial.

In addition, the bill provides a private right of action for consumers against those who violate the Consumer Fraud Act. Under this provision the consumer will be entitled to triple damages, reasonable attorney's fees, and reasonable costs of suit.

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The Governor stated that this provision, in his opinion, will provide easier access to the courts for the consumer, will increase the attractiveness of consumer actions to attorneys and will also help reduce the burdens on the Division of Consumer Affairs.

In signing Senate Bill 633, sponsored by Senator Michael A. Giuliano (R., Essex), the Governor noted that the new law will provide greater protection to the public in cases where a credit card has been misplaced or stolen and is used without authority from the card holder. In addition, the law severely limits the liability of credit card holders and is expected to greatly reduce the flood of unsolicited credit cards.

The bill, which was amended in accordance with the recommendations made by the Governor in a conditional veto March 8th, permits a maximum liability of \$50 for the unauthorized use of a credit card and only then in cases where such use occurs before an individual has notified the company issuing the card of its loss or theft.

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STATE OF NEW JERSEY
GEORGE F. KUGLER, JR.
ATTORNEY GENERAL

June 9, 1971

My dear Senator

I am writing to express my support of and to seek your support for A-2402 which substantially amends New Jersey's Consumer Fraud Act. This bill is the major bi-product of my office's examination of the consumer protection efforts of this State.

After becoming Attorney General, I initiated a thorough review and examination of our efforts in the Office of Consumer Protection. While this review was being conducted by members of my staff, I also permitted the Center for Analysis of Public Issues to independently examine the functioning of the State Office of Consumer Protection and, subsequently, report thereon. The examination by my staff and the independent study by the Center clearly demonstrated to me that we needed to improve our consumer protection effort both substantively and administratively. It became apparent that two of the most significant and effective ways to do that was to establish a new Division of Consumer Affairs, which as you well know has now been accomplished through your efforts, and to propose and to seek passage of substantial and significant amendments to the Consumer Fraud Act. The latter course of action is contained in A-2402.

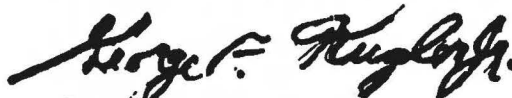
This bill, which has the support of Governor Cahill and Director Charles Irwin of the Division of Consumer Affairs, provides, among other things an increase in the penalties for violation of the act. At the present time the law contains a penalty of \$50 to \$100 for a first offense and \$100 to \$250 for a subsequent offense. Our studies clearly demonstrated that the present figures were completely unrealistic and ineffective--merely a "cost of doing business" for the unscrupulous. Consequently, we have proposed that for a first offense a fine shall be no more than \$2,000 and for a second offense no more than \$5,000.

The bill also provides the Attorney General for the first time with the administrative authority to order restitution of money or property to the defrauded consumer. We think this provision will expedite the processing (both administratively and judicially) of consumer fraud cases and will have a significant deterrent effect upon all unlawful commercial practices.

One other most significant provision of the bill and perhaps one of the most substantial and necessary remedies provided by this legislation grants the consumer a private right of action against persons violating the Consumer Fraud Act. In addition the provision mandates treble damages, reasonable attorneys fees and reasonable costs of suit in such an action. We found through our study that consumers are often without adequate remedy for redressing violations such as those contained in the Consumer Fraud Act. In addition, we found that consumers most often cannot afford the cost of pursuing what remedies they do have available and that attorneys are not generally attracted to individual consumer suits which involve a great amount of work and very little monetary reward. Consequently, we included the above private right of action in order to provide the vehicle for private consumer redress, to make that vehicle economically feasible to the private consumer and to make it economically and professionally attractive to the attorneys of this State.

As I think you can see from the above, much thought and effort has been given to providing an effective and a fair legislative vehicle for consumer action. We are anxious that this legislation be given your serious consideration and hopefully your vote on June 14th so that we might be able to implement the provisions of this bill as quickly as possible. As you well know, if the bill is not passed at your upcoming meeting, it will undoubtedly be some time before it can be passed. I hope that I have been able to be of some help to you in explaining the background of some of the provisions of this act and I assure you that if you have any questions, I will be most happy to try to answer them for you.

Very truly yours,



George F. Kugler, Jr.
Attorney General