

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1064

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 2010

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Assembly Bill No. 1064.

As amended, this bill eliminates the award of attorneys' fees, filing fees, and costs of suit in cases of technical violations under the Consumer Fraud Act.

Under the Consumer Fraud Act, an individual who suffers an ascertainable loss of money or property as a result of another person's violation is entitled to reasonable attorneys' fees, filing fees, and costs of suit. Further, the State's courts have held that if a person can establish a violation of the act's accompanying regulations, that person is entitled to reasonable attorneys' fees, filing fees and reasonable costs of suit, even if there were no damages resulting from the violation.

This bill specifies that attorneys' fees, filing fees, and costs of suit are not to be awarded for a technical violation of the Consumer Fraud Act. The amended bill defines a technical violation as one in which the person held in violation made a good faith effort to comply with the provisions of the Consumer Fraud Act and the resulting violation did not impact the quality of the product or service provided or result in an ascertainable loss to the consumer. Under the amended bill, technical violations do not include a second or subsequent violations of the same or similar nature, provided the person has been notified of the original violation and has had reasonable time and opportunity to rectify others.

The amended bill also clarifies that its provisions in no way prevent attorneys' fees, filing fees, and reasonable costs of suit from being awarded in suits brought by the Attorney General, regardless of whether they are for technical violations.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

At the sponsor's request, the committee amended the bill to:

- Define “technical violation” as one in which the person held in violation made a good faith effort to comply with the provisions of the Consumer Fraud Act and the resulting violation did not impact the quality of the product or service or result in an ascertainable loss to the consumer;
- Specify that technical violations do not include second or subsequent violations of the same or similar nature, provided the person has been notified of the original violation and has had reasonable time and opportunity to rectify others; and
- Clarify that the bill’s provisions in no way prevent attorneys’ fees, filing fees, and reasonable costs of suit from being awarded in suits brought by the Attorney General, regardless of whether they are for technical violations.