

ASSEMBLY, No. 3892

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 4, 2014

Sponsored by:

Assemblyman CHARLES MAINOR

District 31 (Hudson)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman JASON O'DONNELL

District 31 (Hudson)

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

SYNOPSIS

“Free Means Free Act”; prohibits misleading advertising of free products.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/2/2015)

1 AN ACT concerning misleading advertising and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.).
3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*
6

7 1. This act shall be known and may be cited as the “Free Means
8 Free Act.”
9

10 2. As used in this act:

11 “Contracted service” means a service offered for sale or sold and
12 agreed to in a contract between a provider and a person.

13 “Product” means any device, equipment, item, or other product
14 offered for sale or sold in this State, including products offered for
15 sale or sold in conjunction with a contracted service.

16 “Provider” means a person that sells or offers to sell a contracted
17 service.

18 “Ultimate cost” means the final cost of a product sold or offered
19 for sale, or provided in conjunction with a contracted service, as a
20 sum of all yearly, monthly, or otherwise divided or totaled
21 payments, and including any shipping, activation, cancellation,
22 return, or restocking fees associated with the product, and
23 contracted service if applicable.
24

25 3. a. It shall be an unlawful practice and a violation of
26 P.L.1960, c.39 (C.56:8-1 et seq.) for a person to sell or offer for sale
27 any product if the person fails to clearly and conspicuously disclose
28 the ultimate cost of the product, including the ultimate cost after the
29 assessment of any fees in the event that the person cancels or
30 terminates a contracted service with a provider or returns the
31 product to the seller or provider.

32 b. A person shall clearly and conspicuously indicate, at the
33 point of sale or contract agreement, the ultimate cost of any product
34 offered for sale or sold by a person, including:

35 (1) whether the cost of the product was offered by the seller or
36 provider as free or at a reduced rate, as part of the sale or contract;

37 (2) the retail value of the product and any associated subsidy
38 offered by the seller or provider;

39 (3) any cancellation fee to be assessed by the provider if the
40 person cancels or terminates the contract, including, if applicable,
41 any formula used to determine the total cancellation fee; and

42 (4) any return or restocking fee to be assessed by the seller or
43 provider if the person returns the product.
44

45 4. It shall be an unlawful practice and a violation of P.L.1960,
46 c.39 (C.56:8-1 et seq.) for a person to advertise any product as free,
47 or offer for sale or sell any product at no cost, if the person: (1)
48 assesses a return or restocking fee for the return of the product or

1 another product sold in conjunction with the free product; (2)
2 assesses a cancellation fee for early termination of a contracted
3 service and the cancellation fee incorporates any actual value or
4 cost of the product; or (3) includes any amount to cover the cost of
5 the product within a bill regularly assessed to a person for the
6 contracted service.

7
8 5. This act shall take effect on the first day of the third month
9 next following the date of enactment.

10 11 12 STATEMENT

13
14 This bill, to be known as the “Free Means Free Act,” would
15 prevent misleading advertising practices of contracted service
16 providers and retailers, by prohibiting the advertising of any
17 product as free, or offering for sale or selling any product at no cost,
18 if it is not ultimately free.

19 Specifically, the bill prohibits a person from advertising,
20 offering, or selling free products if the person: (1) assesses a return
21 or restocking fee for the return of the product or another product
22 sold in conjunction with the free product; (2) assesses a cancellation
23 fee for early termination of a contracted service and the cancellation
24 fee incorporates any actual value or cost of the product; or (3)
25 includes any amount to cover the cost of the product within a bill
26 regularly assessed to a person for the contracted service.

27 The bill also requires a person to clearly and conspicuously
28 disclose the ultimate cost of any product, including the ultimate cost
29 after any fees (e.g. cancellation or restocking fees) are assessed.
30 Under the bill, the “ultimate cost” is defined to mean the final cost
31 of a product sold or offered for sale, or provided in conjunction
32 with a contracted service, as a sum of all yearly, monthly, or
33 otherwise divided or totaled payments, and including any shipping,
34 activation, cancellation, return, or restocking fees associated with
35 the product, and contracted service if applicable.

36 Under the bill, a person is required to clearly and conspicuously
37 indicate the ultimate cost of the product at the point of sale or
38 contract agreement, including:

39 (1) whether the cost of the product was offered by the seller or
40 provider as free or at a reduced rate, as part of the sale or contract;

41 (2) the retail value of the product and any associated subsidy
42 offered by the seller or provider;

43 (3) any cancellation fee to be assessed by the provider if the
44 person cancels or terminates the contract, including, if applicable,
45 any formula used to determine the total cancellation fee; and

46 (4) any return or restocking fee to be assessed by the seller or
47 provider if the person returns the product.

A3892 MAINOR, MORIARTY

4

1 An unlawful practice under the consumer fraud act is punishable
2 by a monetary penalty of not more than \$10,000 for a first offense
3 and not more than \$20,000 for any subsequent offense. In addition,
4 violations can result in cease and desist orders issued by the
5 Attorney General, the assessment of punitive damages, and the
6 awarding of treble damages and costs to the injured party.