

ASSEMBLY CONSUMER AFFAIRS AND REGULATED  
PROFESSIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1246**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JANUARY 23, 1997

The Assembly Consumer Affairs and Regulated Professions Committee reports favorably and with committee amendments Assembly Bill No. 1246.

As amended, this bill amends and supplements various provisions of the consumer fraud act (C.56:8-1 et seq.). Under current law, any person who violates the provisions of the consumer fraud act is liable to a penalty of not more than \$7,500 for the first offense and not more than \$15,000 for the second and each subsequent offense. The bill revises the act's penalties by providing that any person who violates the consumer fraud act and who has not previously violated its provisions shall be liable to a penalty of not more than \$7,500 for the first violation of the act. In a case of a second violation of the act, or if a person is found liable for more than one violation of the act within a single proceeding, the penalty for the second violation shall not exceed \$15,000. For a third violation of the act, or if a person is found liable for more than two violations of the act within a single proceeding, the penalty shall not exceed \$15,000 for each additional violation.

The bill also amends section 11 of P.L.1960, c.39 (C.56:8-11), which provides that in any action or proceeding brought under the provisions of the consumer fraud act, the Attorney General shall be entitled to recover costs for the use of New Jersey. The bill delineates particular costs that can be so recovered including, but not limited to, costs of investigation, expert witness fees, attorney's fees, transcript costs, and the costs of an administrative proceeding brought pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

In addition, the bill amends section 3 of P.L.1960, c.39 (C.56:8-3) to allow the Attorney General to investigate suspected violations of the consumer fraud act with regard to sweepstakes or notification of a promotion. The Attorney General may issue a notice of violation which may, at the discretion of the Attorney General, give rise to a hearing pursuant to section 1 of P.L.1967, c.97 (C.56:8-3.1). As further provided in the bill, service by the Attorney General of any

such notice shall be made personally within this State, but if that cannot be obtained, substituted service may be made in accordance with the procedures already contained in section 5 of P.L.1960, c.39 (C.56:8-5).

This bill provides that it shall be a violation of the consumer fraud act for any person conducting an advertising or promotion scheme involving a sweepstakes to engage in a number of activities specified in the bill. These activities include:

(1) conditioning the receipt of a prize or entry into a sweepstakes upon the provision of consideration or submission to a sales promotion effort, or to providing notification of such a condition to any person by any means;

(2) relating the odds of winning a sweepstakes to the provision of consideration or submission to a sales promotion effort, or to providing notification thereof to any person by any means;

(3) using, in connection with a sweepstakes, any written or oral statement, type size, illustration, graphic depiction or design which has the capacity to mislead or deceive the recipient concerning various material facts;

(4) failing to include in a sweepstakes notification particular information described in the bill;

(5) failing to award or distribute all prizes in accordance with the representations contained in the sweepstakes notification;

(6) representing or implying that a premium is free of charge if that premium is conditioned upon the provision of consideration or submission to a sales promotion effort in connection with a promotion;

(7) using, in connection with a promotion, any written or oral statement, type size, illustration, graphic depiction or design which has the capacity to mislead or deceive the recipient concerning certain material facts;

(8) failing to distribute or otherwise make available premiums within the dates represented; and

(9) transferring funds, through any means, from a bank or credit card account of another person without that person's express written consent.

As defined in the bill, "sweepstakes" means a process for awarding prizes in which the element of chance is present and no consideration is required, whether the process is referred to as a sweepstakes, contest, competition, game, puzzle, drawing or by another name; provided that it does not include activities prohibited by Title 2C of the New Jersey Statutes.

This bill was pre-filed for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.