

ASSEMBLY BILL NO. 625

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 625 with my recommendations for reconsideration.

This bill makes it an unlawful practice under the Consumer Fraud Act for a person to send an unsolicited check to an individual that, upon being cashed or redeemed, automatically obligates the recipient to pay any fee or enrolls that individual in any club, service, plan, or continuing agreement.

While I share the sponsors' interest in protecting vulnerable consumers from misleading advertising and marketing practices, I am troubled by the bill's imposition of new, significant financial penalties for New Jersey's already over-regulated business community. Typically, our State's Consumer Fraud Act is reserved for fraudulent, deceptive, misleading, or other unconscionable business practices, which unscrupulous conduct justifies the significant fines and penalties imposed under the law. Here, however, the bill's prohibitions apply even if there is no use or employment of any fraudulent or deceitful conduct. Thus, under certain circumstances, the severe penalties established under the Consumer Fraud Act would be disproportionate to the offenses proscribed in the legislation. In order to address this imbalance, I propose removing the bill's provisions from the Consumer Fraud Act, establishing a more equitable penalty, and maintaining enforcement authority with the Attorney General.

Likewise, I am concerned that the legislation will expose businesses to costly, unwarranted litigation by failing to provide that a new, private civil cause of action has not been

created. Accordingly, I propose revising the legislation to clarify that the administrative penalty established therein is the sole remedy for violations of the bill's provisions. In so doing, we can ensure that the bill is carefully calibrated to protect consumers, while avoiding unwarranted fines, penalties, and litigation for the State's business community.

Accordingly, I herewith return Assembly Bill No. 625 and recommend that it be amended as follows:

- Page 2, Title, Line 2: Delete "P.L.1960, c.39 (C.56:8-1 et seq.)" and insert "Title 2A of the New Jersey Statutes"
- Page 2, Section 1, Line 7: Delete "It shall be an unlawful practice for a" and insert "No"
- Page 2, Section 1, Line 7: Delete "to" and insert "shall"
- Page 2, Line 25: Insert new section 2 to read as follows: "2. a. A person who violates this act shall be subject to a civil penalty in an amount not to exceed \$500 for the first violation and \$1,000 for each subsequent violation, collectible by the Attorney General in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
- b. Nothing set forth in this act shall be construed as creating, establishing or authorizing a private cause of action by an aggrieved person against a person who has violated, or is alleged to have violated, the provisions of this act."

Page 2, Section 2, Line 26:

[seal]

Delete "2." and insert "3."

Respectfully,

/s/ Chris Christie

Governor

Attest:

/s/ Christopher S. Porrino

Chief Counsel to the Governor