

S. 336

A. 145

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 5, 2011

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IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

IN ASSEMBLY -- Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to unordered goods and to repeal paragraph a of subdivision 2 of section 396 of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraph a of subdivision 2 of section 396 of the general  
2 business law is REPEALED and a new paragraph a is added to read as  
3 follows:  
4     A. (1) NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION, OR  
5 AGENT OR EMPLOYEE THEREOF, SHALL, IN ANY MANNER, OR BY ANY MEANS, OFFER  
6 FOR SALE, LEASE, OR CHARGE ANY FEE FOR ANY TANGIBLE OR INTANGIBLE GOODS,  
7 OR SERVICES WHICH HAVE NOT BEEN ACTUALLY ORDERED OR REQUESTED BY THE  
8 RECIPIENT, EITHER ORALLY OR IN WRITING. THE RECEIPT OF ANY SUCH UNOR-  
9 DERED GOODS, OR FURNISHING OF SUCH SERVICES SHALL FOR ALL PURPOSES BE  
10 DEEMED AN UNCONDITIONAL GIFT TO THE RECIPIENT WHO MAY USE OR DISPOSE OF  
11 THE SAME IN ANY MANNER HE OR SHE SEES FIT WITHOUT ANY OBLIGATION ON HIS  
12 OR HER PART TO THE SENDER.  
13     (2) NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION, OR AGENT  
14 OR EMPLOYEE THEREOF, SHALL BILL OR OTHERWISE REQUEST PAYMENT FOR GOODS  
15 OR SERVICES NOT ACTUALLY ORDERED OR REQUESTED BY THE RECIPIENT.  
16     (3) NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION, OR AGENT  
17 OR EMPLOYEE THEREOF, SHALL PROPOSE A CONTRACT OR CONTRACT TERM WHICH  
18 PROVIDES FOR A FEE OR CHARGE FOR GOODS OR SERVICES NOT ACTUALLY ORDERED  
19 OR REQUESTED BY THE RECIPIENT AND WHICH PURPORTEDLY MAKES THE RECIPIENT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 LEGALLY BOUND TO MAKE PAYMENT FOR SUCH GOODS OR SERVICES UPON THE RECIP-  
2 IENT'S FAILURE TO RESPOND WITHIN A SPECIFIED PERIOD OF TIME. ANY SUCH  
3 PROPOSAL SHALL BE DEEMED TO BE VOID AS AGAINST PUBLIC POLICY AND WHOLLY  
4 UNENFORCEABLE.

5 (4) ANY TANGIBLE GOODS SENT WHICH HAVE NOT BEEN ACTUALLY ORDERED OR  
6 REQUESTED BY THE RECIPIENT SHALL BE PROMINENTLY MARKED UPON THE CONTAIN-  
7 ER THEREOF IN BOLD LETTERS AS FOLLOWS: "THIS IS A GIFT. PAYMENT NOT  
8 REQUIRED FOR THIS ITEM."

9 (5) AT LEAST THIRTY DAYS PRIOR TO THE SENDING OF ANY INTANGIBLE GOODS  
10 OR FURNISHING OF ANY SERVICES OFFERED FOR SALE OR LEASE WHICH HAVE NOT  
11 BEEN ACTUALLY ORDERED OR REQUESTED BY THE RECIPIENT, THE SENDER SHALL  
12 MAIL OR DELIVER A WRITTEN NOTICE SEPARATE FROM ANY OTHER DOCUMENT MAILED  
13 OR DELIVERED TO THE RECIPIENT, CONTAINING A SHORT, CLEAR AND COHERENT  
14 STATEMENT, IN A SIZE EQUAL TO AT LEAST TEN-POINT BOLD TYPE, THE NAME AND  
15 A SHORT DESCRIPTION OF THE GOOD OR SERVICE TO BE SENT OR FURNISHED, THE  
16 APPROXIMATE DATE SUCH GOOD OR SERVICE IS TO BE SENT OR FURNISHED, THAT  
17 THE GOOD OR SERVICE IS A GIFT, AND THAT PAYMENT IS NOT REQUIRED FOR THIS  
18 GOOD OR SERVICE.

19 (6) THIS PARAGRAPH SHALL NOT APPLY TO A MEMBERSHIP OR CLUB ARRANGEMENT  
20 WHICH IS REGULATED BY THE FEDERAL TRADE COMMISSION PURSUANT TO 16 CFR  
21 425 AS SUCH SECTION MAY FROM TIME TO TIME BE AMENDED, OR OTHER CONTRAC-  
22 TUAL PLANS OR ARRANGEMENTS SUCH AS CONTINUITY PLANS, SUBSCRIPTION  
23 ARRANGEMENTS, STANDING ORDER ARRANGEMENTS, SUPPLEMENTS AND SERIES  
24 ARRANGEMENTS UNDER WHICH THE SELLER PERIODICALLY SHIPS MERCHANDISE TO A  
25 CONSUMER WHO HAS CONSENTED IN ADVANCE TO RECEIVE SUCH MERCHANDISE ON A  
26 PERIODIC BASIS.

27 (7) THIS PARAGRAPH SHALL NOT APPLY TO OFFERS FOR SALE OR LEASE OF  
28 UNORDERED OR UNREQUESTED SERVICES IN CONNECTION WITH THE RENEWAL OR  
29 EXTENSION OF AN EXISTING CONTRACT, PROVIDED SUCH OFFER WAS OTHERWISE  
30 PERMITTED BY LAW OR THE TERMS OF SUCH CONTRACT AND FURTHER PROVIDED THAT  
31 NO UNORDERED OR UNREQUESTED SERVICE IS OFFERED IN CONNECTION WITH THE  
32 RENEWAL OR EXTENSION FOR A FEE OR CHARGE IN ADDITION TO ANY SERVICE OR  
33 SERVICES WHICH WERE THE SUBJECT OF SUCH CONTRACT.

34 (8) ANY RECIPIENT WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF  
35 THIS PARAGRAPH MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH  
36 UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES  
37 OR FIFTY DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. IN ANY  
38 ACTION UNDER THIS SUBPARAGRAPH, THE COURT MAY AWARD REASONABLE ATTOR-  
39 NEY'S FEES TO A PREVAILING PLAINTIFF. ANY RECIPIENT WHO HAS RECEIVED ANY  
40 BILL STATEMENT OR REQUEST FOR PAYMENT WITH RESPECT TO ANY GOODS OR  
41 SERVICES DEEMED TO BE AN UNCONDITIONAL GIFT UNDER THIS PARAGRAPH SHALL  
42 BE DEEMED TO BE INJURED UNDER THIS SUBPARAGRAPH.

43 (9) NOTHING IN THIS PARAGRAPH SHALL IN ANY WAY LIMIT THE RIGHTS OR  
44 REMEDIES WHICH ARE OTHERWISE AVAILABLE TO A RECIPIENT UNDER ANY OTHER  
45 PROVISION OF LAW, INCLUDING, BUT NOT LIMITED TO, THE UNIFORM COMMERCIAL  
46 CODE AND ARTICLE TWENTY-TWO-A OF THIS CHAPTER.

47 (10) WAIVER OF RIGHTS BY ANY RECIPIENT UNDER THIS PARAGRAPH SHALL BE  
48 DEEMED CONTRARY TO PUBLIC POLICY AND SHALL BE UNENFORCEABLE AND VOID.

49 (11) FOR THE PURPOSES OF THIS PARAGRAPH: (I) THE TERM "TANGIBLE GOOD"  
50 SHALL MEAN ANY GOOD SENT TO THE RECIPIENT BY MEANS OF A CONTAINER; AND

51 (II) THE TERM "INTANGIBLE GOOD" SHALL MEAN ANY GOOD WHICH IS NOT A  
52 TANGIBLE GOOD.

53 S 2. This act shall take effect immediately.