

777

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

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

AN ACT to amend the general business law, in relation to the sale of monuments and memorials

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

1 Section 1. Subdivision 2 of section 454 of the general business law,
2 as amended by chapter 390 of the laws of 2007, is amended to read as
3 follows:
4 2. Each sale of a memorial shall only be evidenced by a written
5 contract which shall be signed by all the parties to the contract, which
6 shall be dated, and which shall be completely separate and may not be
7 included in any other contract, agreement, purchase order, price list,
8 itemization of funeral services and merchandise selected or like docu-
9 ment reflecting the purchase by a consumer of any other real or personal
10 property or service related to the burial, cremation, or other disposi-
11 tion of the remains of a deceased person. For purposes of this section,
12 the pourer of a foundation shall not be considered the seller of a foun-
13 dation. Such separate contract shall be prepared, completed and main-
14 tained in accordance with this section for every memorial sale, includ-
15 ing a foundation therefor, and shall be the only contractual document
16 prepared in connection with such sale. Provided however in the case of
17 the sale of a monument or memorial made at the same time as a preneed
18 sale of funeral goods or services, a one page document summarizing the
19 transaction shall be given to the consumer in addition to, but not in
20 lieu of, the separate contract required by this section. A full and
21 complete copy of such contract shall be given to the consumer by the
22 seller at the time of purchase of such memorial, and shall be retained
23 by the seller for a period of at least three years from the date of
24 sale. Said contract shall contain at least the following:

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

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- 1 (a) the name, address and telephone number of the seller of the memo-
2 rial;
3 (b) the name, address and telephone number of the consumer;
4 (c) the full name of the individual to be memorialized and, if known,
5 the date of such individual's death;
6 (d) a full description of the memorial, including the material to be
7 provided, the dimensions of the finished memorial, a sketch or drawing
8 of the proposed memorial, the wording of any inscription on such memori-
9 al including the approximate layout thereof, [and] the method of SAND-
10 BLASTING OR engraving of such inscription, AND A CERTIFICATE OF QUALITY,
11 DETAILING COUNTRY OR STATE OF ORIGIN;
12 (e) the approximate date when the memorial is expected to be
13 completed;
14 (f) the name of the cemetery in which the memorial is to be placed,
15 together with the location of the plot or grave, if known, AND THE NAME
16 OF THE OWNER OF THE PLOT; and
17 (g) a full disclosure of each of the following: the price of the memo-
18 rial; applicable sales tax, if any; the charge made by the cemetery for
19 the foundation; any charges for additional work, provided that such
20 additional work is clearly described in the contract and such charges
21 are itemized; the total price as contracted; and the schedule for
22 payment, if any.

23 S 2. The general business law is amended by adding a new section 454-a
24 to read as follows:

25 S 454-A. UNSOLICITED OFFERS FOR MONUMENTS OR MEMORIALS. 1. (A) EXCEPT
26 AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IT SHALL BE UNLAWFUL
27 TO PROVIDE ANY OFFER FOR MONUMENTS OR MEMORIALS UNLESS SUCH OFFER HAS
28 FIRST BEEN SOLICITED BY THE INDIVIDUAL TO WHICH IT IS SENT.

29 (B) PROVIDED, HOWEVER, SUCH AN OFFER IS PERMISSIBLE WHERE, IN LARGE,
30 BOLD-FACE TYPE AT THE TOP OF SUCH OFFER, "SOLICITATION" IS CLEARLY
31 PRINTED.

32 2. AN OFFER PROVIDED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF
33 THIS SECTION WHICH OFFERS FOR SALE A SPECIFIC MONUMENT OR MEMORIAL OR
34 CHOICE OF SPECIFIC MONUMENTS OR MEMORIALS SHALL ADDITIONALLY PROVIDE: A
35 FULL DESCRIPTION OF THE MONUMENT OR MEMORIAL, INCLUDING THE MATERIAL TO
36 BE PROVIDED, THE DIMENSIONS OF THE FINISHED MONUMENT OR MEMORIAL, A
37 SKETCH OR DRAWING OF THE PROPOSED MONUMENT OR MEMORIAL, THE METHOD OF
38 SAND BLASTING OR ENGRAVING OF ANY INSCRIPTION, AND A CERTIFICATE OF
39 QUALITY DETAILING COUNTRY OR STATE OF ORIGIN, AS WELL AS A FULL DISCLO-
40 SURE OF EACH OF THE FOLLOWING: THE TOTAL PRICE OF THE MONUMENT OR MEMO-
41 RIAL AS OFFERED; APPLICABLE SALES TAX AS OFFERED, IF ANY; THE CHARGE
42 MADE BY THE CEMETERY FOR THE FOUNDATION IF THE CEMETERY IS KNOWN; ANY
43 CHARGES FOR ADDITIONAL WORK, PROVIDED THAT SUCH ADDITIONAL WORK IS
44 CLEARLY DESCRIBED IN THE OFFER AND SUCH CHARGES ARE ITEMIZED; AND THE
45 SCHEDULE FOR PAYMENT, IF ANY.

46 3. WHENEVER THERE SHALL BE A VIOLATION OF THE PROVISIONS OF THIS
47 SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME
48 OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING
49 JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
50 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE
51 VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR THE
52 JUSTICE THAT THE DEFENDANT HAS VIOLATED THIS SECTION, AN INJUNCTION MAY
53 BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER
54 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT BEEN
55 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE
56 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF

1 SUBDIVISION (A) OF SECTION EIGHT THOUSAND THREE HUNDRED THREE OF THE
2 CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITUTION. IN CONNECTION WITH
3 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO
4 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
5 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. WHENEVER
6 THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED,
7 THE COURT MAY IMPOSE A CIVIL PENALTY OF UP TO FIVE HUNDRED DOLLARS FOR
8 THE FIRST VIOLATION AND UP TO ONE THOUSAND DOLLARS FOR THE SECOND OR
9 SUBSEQUENT VIOLATION WITHIN AN EIGHTEEN MONTH PERIOD.

10 4. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO APPLY TO A
11 SOLICITED OFFER FOR SALE MADE BY ANY FIRM, CORPORATION OR OTHER ENTITY
12 OWNED BY AN INDIVIDUAL LICENSED OR REGISTERED UNDER ARTICLE THIRTY-FOUR
13 OF THE PUBLIC HEALTH LAW AS PART OF A FUNERAL PREARRANGEMENT OR AS PART
14 OF A PRENEED CONTRACT PURSUANT TO SECTION FOUR HUNDRED FIFTY-THREE OF
15 THIS ARTICLE.

16 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CEMETERY CORPO-
17 RATIONS AS DEFINED AND REGULATED BY ARTICLE FIFTEEN OF THE NOT-FOR-PRO-
18 FIT CORPORATION LAW AND THE REGULATIONS PROMULGATED THEREUNDER.

19 S 3. This act shall take effect on the ninetieth day after it shall
20 have become a law.