

5051

2013-2014 Regular Sessions

I N S E N A T E

May 7, 2013

Introduced by Sen. DILAN -- 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 communications by retail stores attempting to settle civil actions deriving from larceny prosecutions

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

1 Section 1. The general business law is amended by adding a new section
2 349-e to read as follows:
3 S 349-E. CIVIL PROCEEDINGS IN LARCENY PROSECUTIONS. 1. WHENEVER A
4 MERCHANT OR RETAIL STORE ATTEMPTS TO SETTLE A CIVIL ACTION THAT IS
5 DERIVATIVE OF A CRIMINAL PROSECUTION COMMENCED UNDER ARTICLE ONE HUNDRED
6 FIFTY-FIVE OF THE PENAL LAW, ALL COMMUNICATIONS PERTAINING TO SUCH
7 ATTEMPTED SETTLEMENT SHALL CONTAIN THE FOLLOWING STATEMENT, WHICH SHALL,
8 IF WRITTEN, BE IN A CONSPICUOUS PLACE, IN FONT LARGER THAN THE REMAINDER
9 OF THE COMMUNICATION, AND, IF SPOKEN, READ IN ITS ENTIRETY:
10 THIS IS AN ATTEMPT TO REACH A SETTLEMENT AGREEMENT IN A CIVIL ACTION
11 FOR SATISFACTION OF DAMAGES RELATED TO A CRIMINAL PROSECUTION. YOU HAVE
12 THE RIGHT TO REFUSE THIS OFFER. YOUR ACCEPTANCE OR REFUSAL OF THIS OFFER
13 HAS NO EFFECT ON ANY CRIMINAL ACTION ARISING FROM THE EVENTS THAT LED TO
14 THIS CIVIL ACTION. FAILURE TO ACCEPT THIS AGREEMENT MAY RESULT IN CIVIL
15 LITIGATION AGAINST YOU.
16 2. A MERCHANT OR RETAIL STORE THAT FAILS TO INCLUDE SUCH STATEMENT IN
17 ANY COMMUNICATION WITH DEFENDANT SHALL BE STRICTLY LIABLE FOR:
18 (A) ANY ACTUAL DAMAGES SUSTAINED BY DEFENDANT AS A RESULT OF SUCH
19 FAILURE;
20 (B) TREBLE THE AMOUNT SOUGHT BY THE MERCHANT OR RETAIL STORE IN ANY
21 SUCH SETTLEMENT AGREEMENT. IN THE CASE OF MULTIPLE SETTLEMENT OFFERS,
22 THE AMOUNT TO BE TREBLED SHALL BE THE HIGHEST SETTLEMENT AMOUNT SOUGHT
23 BY SUCH MERCHANT OR RETAIL STORE;

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

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1 (C) IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING
2 LIABILITY, THE COSTS OF THE ACTION, TOGETHER WITH A REASONABLE ATTOR-
3 NEYS' FEE AS DETERMINED BY THE COURT. ON A FINDING BY THE COURT THAT AN
4 ACTION UNDER THIS SECTION WAS BROUGHT IN BAD FAITH AND FOR THE PURPOSE
5 OF HARASSMENT, THE COURT MAY AWARD TO THE DEFENDANT ATTORNEYS' FEES
6 REASONABLE IN RELATION TO THE WORK EXPENDED AND COSTS.

7 S 2. This act shall take effect immediately.