S T A T E O F N E W Y O R K

777--A

Cal. No. 440

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Subdivision 2 of section 454 of the general business law, as amended by chapter 390 of the laws of 2007, is amended to read as follows:

2. Each sale of a memorial shall only be evidenced by a written contract which shall be signed by all the parties to the contract, which shall be dated, and which shall be completely separate and may not be included in any other contract, agreement, purchase order, price list, itemization of funeral services and merchandise selected or like document reflecting the purchase by a consumer of any other real or personal property or service related to the burial, cremation, or other disposition of the remains of a deceased person. For purposes of this section, the pourer of a foundation shall not be considered the seller of a foundation. Such separate contract shall be prepared, completed and maintained in accordance with this section for every memorial sale, including a foundation therefor, and shall be the only contractual document prepared in connection with such sale. Provided however in the case of the sale of a monument or memorial made at the same time as a preneed sale of funeral goods or services, a one page document summarizing the transaction shall be given to the consumer in addition to, but not in lieu of, the separate contract required by this section. A full and complete copy of such contract shall be given to the consumer by the seller at the time of purchase of such memorial, and shall be retained by the seller for a period of at least three years from the date of 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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(a) the name, address and telephone number of the seller of the memorial;
(b) the name, address and telephone number of the consumer;
(c) the full name of the individual to be memorialized and, if known, the date of such individual's death;
(d) a full description of the memorial, including the material to be provided, the dimensions of the finished memorial, a sketch or drawing of the proposed memorial, the wording of any inscription on such memorial including the approximate layout thereof, [and] the method of engraving of such inscription AND THE COUNTRY OR STATE OF ORIGIN OF SUCH MONUMENT OR MEMORIAL PROVIDED BY THE MANUFACTURER;
(e) the approximate date when the memorial is expected to be completed;
(f) the name of the cemetery in which the memorial is to be placed, together with the location of the plot or grave, if known; and
(g) a full disclosure of each of the following: the price of the memorial; applicable sales tax, if any; the charge made by the cemetery for the foundation; any charges for additional work, provided that such additional work is clearly described in the contract and such charges are itemized; the total price as contracted; and the schedule for payment, if any.

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

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

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

2. WHENEVER THERE SHALL BE A VIOLATION OF THE PROVISIONS OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR THE JUSTICE THAT THE DEFENDANT HAS VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHT THOUSAND THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITUTION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF UP TO FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION AND UP TO ONE THOUSAND DOLLARS FOR THE SECOND OR SUBSEQUENT VIOLATION WITHIN AN EIGHTEEN MONTH PERIOD.

3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CEMETERY CORPORATIONS AS DEFINED AND REGULATED BY ARTICLE FIFTEEN OF THE NOT-FOR-PROFIT CORPORATION LAW AND THE REGULATIONS PROMULGATED THEREUNDER.

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