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

10766--A

I N A S S E M B L Y

April 20, 2010

Introduced by M. of A. NOLAN -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to disclosures required for certain solicitations by container

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

Section 1. The general business law is amended by adding a new section 399-bbb to read as follows:

S 399-BBB. SOLICITATIONS BY CONTAINER; DISCLOSURES. 1. AS USED IN THIS SECTION THE TERM "COLLECTION CONTAINER" SHALL MEAN AN UNATTENDED CANISTER, BOX, RECEPTACLE, OR SIMILAR DEVICE, USED FOR THE SOLICITATION AND COLLECTION OF PERSONAL PROPERTY, NOT INCLUDING MONEY OR EVIDENCES OF DEBT. SUCH TERM SHALL NOT INCLUDE AN UNATTENDED CANISTER, BOX, RECEPTACLE, OR SIMILAR DEVICE, USED EXCLUSIVELY FOR THE COLLECTION OF USED PAPER, CARDBOARD, MOTOR OIL, BOTTLES, CANS OR OTHER RECEPTACLES OR MATERIALS, NOT INCLUDING TEXTILES, FOR RECYCLING OR WASTE DIVERSION PURPOSES.

2. ANY PERSON, BUSINESS, NOT-FOR-PROFIT ORGANIZATION OR OTHER ENTITY OR ENTITIES, OR AN AGENT OR AGENTS, WHETHER PAID OR NOT PAID, OF SUCH PERSON, BUSINESS, NOT-FOR-PROFIT ORGANIZATION OR OTHER ENTITY, WHO PLACES A COLLECTION CONTAINER IN A PUBLIC PLACE ON PUBLIC OR PRIVATE PROPERTY SHALL AFFIX TO THE COLLECTION CONTAINER A LABEL THAT IS DESIGNED TO BE INCAPABLE OF BEING DESTROYED OR REMOVED AND THAT CLEARLY AND CONSPICUOUSLY DISPLAYS IN AT LEAST TWENTY-FOUR POINT TYPE UNLESS OTHERWISE SPECIFIED IN THIS SECTION AND ON THE FRONT OF THE COLLECTION CONTAINER IN A MANNER THAT IS READILY VISIBLE TO AN INDIVIDUAL PLACING PROPERTY IN THE COLLECTION CONTAINER THE FOLLOWING:

(A) THE NAME OF THE PERSON, BUSINESS, NOT-FOR-PROFIT ORGANIZATION OR OTHER ENTITY WHICH OWNS THE COLLECTION CONTAINER AND ANY AGENT THEREOF; THE LEGAL ADDRESS AND TELEPHONE NUMBER OF SUCH PERSON, BUSINESS, NOT-FOR-PROFIT ORGANIZATION OR OTHER ENTITY AND ANY AGENT THEREOF WHERE THE OWNER OF THE COLLECTION CONTAINER OR ITS AGENT CAN BE REACHED DURING

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

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ORDINARY BUSINESS HOURS; ANY REGISTRATIONS REQUIRED BY STATE OR LOCAL LAW OF SUCH PERSON, BUSINESS, NOT-FOR-PROFIT ORGANIZATION OR OTHER ENTITY AND ANY AGENT THEREOF; AND A STATEMENT THAT SHALL TAKE THE FOLLOWING FORM: FOR MORE INFORMATION, CONTACT THE DEPARTMENT OF LAW AT (INSERT THE CURRENT TELEPHONE NUMBER ESTABLISHED BY THE DEPARTMENT OF LAW FOR RECEIVING INQUIRIES FROM CONSUMERS) OR (INSERT THE CURRENT ADDRESS OF THE WEBSITE OF THE DEPARTMENT OF LAW). IF MORE THAN ONE PERSON, BUSINESS, NOT-FOR-PROFIT ORGANIZATION OR OTHER ENTITY OWN THE COLLECTION CONTAINER, ALL OF THE OWNERS' NAMES, LEGAL ADDRESSES, TELEPHONE NUMBERS AND ANY REGISTRATIONS REQUIRED BY STATE OR LOCAL LAW OF SUCH OWNERS SHALL BE INCLUDED IN THE DISCLOSURE LABEL. IF MORE THAN ONE AGENT REPRESENTS AN OWNER OF THE COLLECTION CONTAINER, ALL OF THE AGENTS' NAMES, LEGAL ADDRESSES, TELEPHONE NUMBERS AND ANY REGISTRATIONS REQUIRED BY STATE OR LOCAL LAW OF SUCH OWNERS SHALL BE INCLUDED IN THE DISCLOSURE LABEL; AND

(B) A STATEMENT ABOUT THE PURPOSE OR PURPOSES FOR THE PROPERTY COLLECTED IN THE CONTAINER USING LETTERS NO LESS THAN TWO INCHES IN HEIGHT AS FOLLOWS:

(I) IF ALL OF THE PROPERTY PLACED IN THE COLLECTION CONTAINER IS DIRECTED TO A NON-BUSINESS PURPOSE OR PURPOSES AS DESCRIBED IN PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THE NOT-FOR-PROFIT CORPORATION LAW OR, IF THE PROPERTY IS SOLD AND ALL PROCEEDS OF SUCH SALE ARE DIRECTED TO A NON-BUSINESS PURPOSE OR PURPOSES DESCRIBED IN PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THE NOT-FOR-PROFIT CORPORATION LAW, THE LABEL AFFIXED TO THE COLLECTION CONTAINER PURSUANT TO THIS SECTION SHALL STATE:

DONATED ITEMS WILL BE USED FOR CHARITABLE PURPOSES

THE VALUE OF ITEMS PLACED IN THIS CONTAINER IS TAX-DEDUCTIBLE.

OR

(II) IF ALL OF THE PROPERTY PLACED IN THE COLLECTION CONTAINER IS NOT DIRECTED TO A NON-BUSINESS PURPOSE OR PURPOSES AS DESCRIBED IN PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THE NOT-FOR-PROFIT CORPORATION LAW, OR IF THE PROPERTY IS SOLD, AND ALL PROCEEDS OF SUCH SALE ARE NOT DIRECTED TO A NON-BUSINESS PURPOSE OR PURPOSES DESCRIBED IN PARAGRAPH (B) OF SECTION TWO HUNDRED ONE OF THE NOT-FOR-PROFIT CORPORATION LAW, THE LABEL AFFIXED TO THE COLLECTION CONTAINER PURSUANT TO THIS SECTION SHALL STATE:

DONATED ITEMS WILL BE USED FOR PROFIT

THE VALUE OF ITEMS PLACED IN THIS CONTAINER IS NOT TAX-DEDUCTIBLE.

3. THE OWNER OF A COLLECTION CONTAINER SHALL OBTAIN WRITTEN CONSENT FROM THE OWNER OR LESSEE OF THE PROPERTY WHERE THE COLLECTION CONTAINER IS LOCATED, OR THE OWNER OR LESSEE'S AUTHORIZED AGENT, STATING THAT THE OWNER OF THE COLLECTION CONTAINER HAS RECEIVED PERMISSION TO PLACE THE BOX ON THE PROPERTY. UPON REQUEST OF ANY LOCAL JURISDICTION, DOCUMENTATION EVIDENCING THE WRITTEN CONSENT SHALL BE MADE AVAILABLE BY THE OWNER OF THE COLLECTION CONTAINER.

4. (A) ANY VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE DEEMED A DECEPTIVE PRACTICE WITHIN THE MEANING OF SECTION THREE HUNDRED FORTY-NINE OF THIS CHAPTER AND ANY REMEDY PROVIDED THEREIN SHALL BE AVAILABLE FOR THE ENFORCEMENT OF THIS SECTION. IN ADDITION, THE DISTRICT ATTORNEY, COUNTY ATTORNEY, AND THE CORPORATION COUNSEL SHALL HAVE CONCURRENT AUTHORITY TO SEEK THE RELIEF IN PARAGRAPH B OF THIS SUBDIVISION, AND ALL CIVIL PENALTIES OBTAINED IN ANY SUCH ACTION SHALL BE RETAINED BY THE MUNICIPALITY OR COUNTY.

(B) IN EVERY CASE WHERE THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, IT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION.

(C) IT SHALL BE A DEFENSE TO THE IMPOSITION OF ANY CIVIL PENALTY OR ANY OTHER REMEDY IN AN ACTION BROUGHT TO ENFORCE THE PROVISIONS OF THIS SECTION IF THE PERSON OR ENTITY AFFIXED A LABEL AS REQUIRED BY THIS SECTION AND SUCH LABEL WAS REMOVED OR DEFACED BY VANDALS, PROVIDED THAT SUCH PERSON OR ENTITY SUBSEQUENTLY COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.

(D) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT ANY RIGHT WHICH ANY PERSON MAY HAVE UNDER ANY OTHER STATUTE OR THE COMMON LAW.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all collection containers in place on the effective date of this act and all collection containers placed subsequent to the effective date of this act.