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

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. PHEFFER, DINOWITZ, MARKEY, SWEENEY -- Multi-Sponsored by -- M. of A. ALFANO, AUBRY, BARRA, CHRISTENSEN, CLARK, COLTON, COOK, DESTITO, ENGLEBRIGHT, ESPAILLAT, GALEF, GLICK, GREENE, HIKIND, HOOPER, JACOBS, JOHN, MAGEE, MAYERSOHN, McENENY, PERRY, SCARBOROUGH, SCHIMMINGER, WEINSTEIN -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring that a consumer be given the opportunity to opt out of the use of any electronic identifying information and notice of collection thereof

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-i to read as follows:

S 399-I. ELECTRONIC MAIL ADDRESS AND OTHER PERSONAL IDENTIFYING INFORMATION; NOTICE AND OPT OUT. 1. IT SHALL BE UNLAWFUL TO SELL OR LEASE ANY CONSUMER'S ELECTRONIC MAIL ADDRESS AND ANY OTHER PERSONAL IDENTIFYING INFORMATION WHICH IS OBTAINED ONLINE WITHOUT PROVIDING THE CONSUMER WITH A CLEAR AND CONSPICUOUS NOTICE OF THE COLLECTION OF THE CONSUMER'S ELECTRONIC MAIL ADDRESS AND ANY OTHER PERSONAL IDENTIFYING INFORMATION AND THE ABILITY TO OPT OUT OF THE SALE OR LEASE OF THE CONSUMER'S ELECTRONIC MAIL ADDRESS OR ANY OTHER PERSONAL IDENTIFYING INFORMATION. FOR THE PURPOSES OF THIS SUBDIVISION, "PERSONAL IDENTIFYING INFORMATION" SHALL INCLUDE, BUT NOT BE LIMITED TO, A PERSON'S SOCIAL SECURITY NUMBER, DATE OF BIRTH, CURRENT AND PRIOR ADDRESSES, AND MOTHER'S MAIDEN NAME.

2. WHENEVER THERE SHALL BE A VIOLATION 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 BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR

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

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JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH 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 EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR SUCH VIOLATION. IN CONNECTION WITH ANY SUCH 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.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.