

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

4746--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONSERRATE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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 magazines sold by subscription

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

- 1 Section 1. Section 335-a of the general business law, as added by
2 chapter 533 of the laws of 1977, subdivision 1 as amended by chapter 534
3 of the laws of 1977 and subdivision 2 as amended by chapter 204 of the
4 laws of 2006, is amended to read as follows:
5 S 335-a. Magazines sold by subscription. 1. Every publisher of a maga-
6 zine sold by subscription shall disclose by a notice on the mailing
7 label of each magazine mailed pursuant to subscription, the month and
8 year in which the subscription expires. Such notice shall be printed or
9 written in a clear and conspicuous form.
10 2. Every publisher of a magazine sold by subscription shall, in any
11 direct written communication to a subscriber inviting the subscriber to
12 renew a subscription, clearly and conspicuously
13 a. disclose the month and year in which the subscription expires[,
14 which may be included on the order card or on the renewal offer]; or
15 b. include the month and year in which the subscription expires on the
16 mailing label when the invitation to renew is packaged with an issue of
17 the magazine, PROVIDED, HOWEVER, THAT THE LOCATION ON THE MAILING LABEL
18 OF THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES IS DISCLOSED IN
19 A CLEAR AND CONSPICUOUS MANNER ON SUCH INVITATION.
20 3. When a subscription is renewed, the renewal period shall not
21 commence before the expiration of any current subscription or renewals.
22 4. ANY PERSON, FIRM, ASSOCIATION OR CORPORATION ENGAGED IN BUSINESS,
23 THE PRINCIPAL PURPOSE OF WHICH IS TO REGULARLY SOLICIT MAGAZINE

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

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1 SUBSCRIPTION ORDERS FOR DELIVERY IN THIS STATE THROUGH THE MAIL FOR
2 PROFIT SHALL, IN ANY DIRECT WRITTEN COMMUNICATION TO A MAGAZINE
3 SUBSCRIBER INVITING THE SUBSCRIBER TO RENEW A SUBSCRIPTION, CLEARLY AND
4 CONSPICUOUSLY

5 A. DISCLOSE THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES; OR
6 B. INCLUDE THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES ON THE
7 MAILING LABEL WHEN THE INVITATION TO RENEW IS PACKAGED WITH AN ISSUE OF
8 THE MAGAZINE, PROVIDED, HOWEVER, THAT THE LOCATION ON THE MAILING LABEL
9 OF THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES IS DISCLOSED IN
10 A CLEAR AND CONSPICUOUS MANNER ON SUCH INVITATION.

11 NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO APPLY TO
12 ANY DIRECT WRITTEN COMMUNICATION INVITING A CONSUMER TO ORDER OR RENEW
13 ANY SUBSCRIPTION SOLD BY A NOT-FOR-PROFIT ENTITY, OR BY A CHARITABLE
14 ORGANIZATION REGISTERED PURSUANT TO SECTION ONE HUNDRED SEVENTY-TWO OF
15 THE EXECUTIVE LAW, OR AS PART OF A SCHOOL FUNDRAISER OR GIFT
16 SUBSCRIPTION OFFER.

17 5. Whenever there shall be a violation of this section, an application
18 may be made by the attorney general in the name of the people of the
19 state of New York to a court or justice having jurisdiction to issue an
20 injunction, and upon notice to the defendant of not less than five days,
21 to enjoin and restrain the continuance of such violations; and if it
22 shall appear to the satisfaction of the court or justice that the
23 defendant has in fact, violated this section, an injunction may be
24 issued by such court or justice, enjoining and restraining any further
25 violation, without requiring proof that any person has, in fact, been
26 injured or damaged thereby. In any such proceeding the court may make
27 allowances to the attorney general as provided in section eighty-three
28 hundred three of the civil practice law and rules, and direct restitu-
29 tion. In connection with any such proposed application, the attorney
30 general is authorized to take proof and make a determination of the
31 relevant facts and to issue subpoenas in accordance with the civil prac-
32 tice law and rules.

33 WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION
34 HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE
35 HUNDRED DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN FIVE HUNDRED
36 DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT.
37 A KNOWING VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL
38 PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR A SINGLE VIOLATION AND
39 NOT MORE THAN ONE THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULTING
40 FROM A SINGLE ACT OR INCIDENT. NO PERSON, FIRM, ASSOCIATION OR CORPO-
41 RATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION
42 IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHOWS, BY
43 A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL
44 AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE
45 OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

46 S 2. This act shall take effect one year after it shall have become a
47 law.