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

2642--C

Cal. No. 218

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. PHEFFER, CYMBROWITZ, COLTON, GABRYSZAK, SPANO, FIELDS, BING, GALEF, CASTRO, MARKEY, ROSENTHAL, STIRPE, N. RIVERA, MAGNARELLI, ZEBROWSKI -- Multi-Sponsored by -- M. of A. DenDEKKER, GLICK, GOTTFRIED, GUNTHER, HEVESI, KOON, LUPARDO, NOLAN, TITONE, TOWNS, WEINSTEIN -- 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 -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

Section 1. Section 335-a of the general business law, as added by chapter 533 of the laws of 1977, subdivision 1 as amended by chapter 534 of the laws of 1977 and subdivision 2 as amended by chapter 204 of the laws of 2006, is amended to read as follows:

S 335-a. Magazines sold by subscription. 1. Every publisher of a magazine sold by subscription shall disclose by a notice on the mailing label of each magazine mailed pursuant to subscription, the month and year in which the subscription expires. Such notice shall be printed or written in a clear [and], conspicuous, UNDERSTANDABLE AND READABLE form.

2. Every publisher of a magazine sold by subscription shall, in any direct written communication to a subscriber inviting the subscriber to renew a subscription, clearly [and], conspicuously, UNDERSTANDABLY AND READABLY:

a. disclose the month and year in which the subscription expires[, which may be included on the order card or on the renewal offer]; or

b. include the month and year in which the subscription expires on the mailing label when the invitation to renew is packaged with an issue of the magazine, PROVIDED, HOWEVER, THAT THE LOCATION ON THE MAILING LABEL

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

LBD02633-12-0

OF THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES IS DISCLOSED IN A CLEAR, CONSPICUOUS, UNDERSTANDABLE AND READABLE MANNER ON SUCH INVITATION.

3. When a subscription is renewed, the renewal period shall not commence before the expiration of any current subscription or renewals.

4. ANY PERSON, FIRM, ASSOCIATION OR CORPORATION ENGAGED IN BUSINESS, THE PRINCIPAL PURPOSE OF WHICH IS TO REGULARLY SOLICIT MAGAZINE SUBSCRIPTION ORDERS FOR DELIVERY IN THIS STATE THROUGH THE MAIL FOR PROFIT SHALL, IN ANY DIRECT WRITTEN COMMUNICATION TO A MAGAZINE SUBSCRIBER INVITING THE SUBSCRIBER TO RENEW A SUBSCRIPTION, CLEARLY, CONSPICUOUSLY, UNDERSTANDABLY AND READABLY:

A. DISCLOSE THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES; OR

B. INCLUDE THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES ON THE MAILING LABEL WHEN THE INVITATION TO RENEW IS PACKAGED WITH AN ISSUE OF THE MAGAZINE, PROVIDED, HOWEVER, THAT THE LOCATION ON THE MAILING LABEL OF THE MONTH AND YEAR IN WHICH THE SUBSCRIPTION EXPIRES IS DISCLOSED IN A CLEAR, CONSPICUOUS, UNDERSTANDABLE AND READABLE MANNER ON SUCH INVITATION.

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

5. 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 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 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 section eighty-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 NOT MORE THAN ONE HUNDRED DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN FIVE HUNDRED DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT. A KNOWING VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN ONE THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT. NO PERSON, FIRM, ASSOCIATION OR CORPORATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

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