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

February 13, 2009

Introduced by M. of A. ERRIGO, ALFANO, CHRISTENSEN, FINCH, GIGLIO, HAWLEY, KOLB, TOBACCO, TOWNSEND, WALKER -- Multi-Sponsored by -- M. of A. BARCLAY, BARRA, CALHOUN, COLTON, CORWIN, CROUCH, GALEF, GREENE, JORDAN, MOLINARO, QUINN, SAYWARD, SPANO, THIELE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to unsolicited electronic communication advertising

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 396-uu to read as follows:

S 396-UU. UNSOLICITED ELECTRONIC COMMUNICATION ADVERTISING. 1. IT SHALL BE UNLAWFUL FOR A PERSON, CORPORATION, PARTNERSHIP OR ASSOCIATION TO INITIATE THE UNSOLICITED TRANSMISSION OF ELECTRONIC COMMUNICATION PROMOTING GOODS OR SERVICES FOR PURCHASE BY THE RECIPIENT OF SUCH COMMUNICATION. FOR PURPOSES OF THIS SECTION, "ELECTRONIC COMMUNICATION" SHALL MEAN EVERY PROCESS BY WHICH A COMMUNICATION IS MADE BY ELECTRONIC MEANS TO A COMPUTER.

2. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ELECTRONIC COMMUNICATIONS SENT TO A RECIPIENT WITH WHOM THE INITIATOR OF SUCH COMMUNICATIONS HAS HAD A PRIOR CONTRACTUAL OR BUSINESS RELATIONSHIP WITH SUCH RECIPIENT. FURTHERMORE, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ELECTRONIC COMMUNICATION NOT EXCEEDING FIVE COMPUTER SCREENS IN LENGTH RECEIVED BETWEEN THE HOURS OF 9:00 P.M. AND 6:00 A.M. LOCAL TIME.

3. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, IT SHALL BE UNLAWFUL TO INITIATE ANY ELECTRONIC COMMUNICATION TO A RECIPIENT WHO HAS PREVIOUSLY SENT A WRITTEN, TELEFACSIMILE OR ELECTRONIC COMMUNICATION MESSAGE TO THE INITIATOR EXPRESSLY DECLARING THAT THE RECIPIENT DOES NOT WANT TO RECEIVE ELECTRONIC COMMUNICATION FROM THE INITIATOR.

4. ANY PERSON WHO HAS RECEIVED AN ELECTRONIC COMMUNICATION IN VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN HIS OR HER OWN

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

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NAME TO RECOVER HIS OR HER ACTUAL DAMAGES OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER.

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