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

7884

2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. MAISEL, ROSENTHAL, FIELDS, REILLY, CHRISTENSEN, SPANO, DelMONTE, GALEF, ROBINSON, JAFFEE, COOK, MILLMAN, ZEBROWSKI, BRADLEY -- Multi-Sponsored by -- M. of A. CAHILL, EDDINGTON, GABRYSZAK, GLICK, GUNTHER, KOON, MARKEY, TITUS, TOWNS, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting unsolicited goods, wares or merchandise from being provided with free materials

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-mmm to read as follows:

S 396-MMM. UNLAWFUL INCLUSION OF UNSOLICITED GOODS, WARES OR MERCHANDISE. 1. A. IT SHALL BE UNLAWFUL FOR A PERSON, PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION OR AGENT OR EMPLOYEE THEREOF TO INCLUDE ANY GOODS, WARES OR MERCHANDISE WITH ANY REQUESTED FREE MATERIALS WHERE THE RECIPIENT OF SUCH FREE MATERIALS IS REQUIRED TO PAY ANY AMOUNT FOR THE UNSOLICITED GOODS, WARES, OR MERCHANDISE.

B. THE RECEIPT OF ANY SUCH UNSOLICITED GOODS, WARES OR MERCHANDISE SHALL FOR ALL PURPOSES BE DEEMED AN UNCONDITIONAL GIFT TO THE RECIPIENT WHO MAY USE OR DISPOSE OF THE SAME IN ANY MANNER HE SEES FIT WITHOUT ANY OBLIGATION ON HIS PART TO THE SENDER. IF AFTER ANY SUCH RECEIPT DEEMED TO BE AN UNCONDITIONAL GIFT UNDER THIS PARAGRAPH, THE SENDER CONTINUES TO SEND BILL STATEMENTS OR REQUESTS FOR PAYMENT WITH RESPECT THERETO, AN ACTION MAY BE BROUGHT BY THE RECIPIENT TO ENJOIN SUCH CONDUCT, IN WHICH ACTION THERE MAY ALSO BE AWARDED REASONABLE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY.

2. A. EVERY VIOLATION OF THIS SECTION SHALL BE DEEMED A DECEPTIVE ACT AND PRACTICE SUBJECT TO ENFORCEMENT UNDER SECTION THREE HUNDRED FORTY-NINE OF THIS CHAPTER. IN EVERY CASE WHERE THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, IT MAY IMPOSE A

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

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CIVIL PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

B. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS ACTUAL DAMAGES OR FIFTY DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO ONE THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING PLAINTIFF.

C. 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 immediately.