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2009-2010 Regular Sessions

I N S E N A T E

January 29, 2009

Introduced by Sens. DILAN, ADAMS, BRESLIN, DIAZ, DUANE, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KRUEGER, MONTGOMERY, ONORATO, PARKER, SAMPSON, SCHNEIDERMAN, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to increasing restrictions on the sending of unsolicited telefacsimile promotional messages and expanding the scope of remedies for violations

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

1 Section 1. Section 396-aa of the general business law, as amended by
2 chapter 393 of the laws of 2008, is amended to read as follows:
3 S 396-aa. Unsolicited telefacsimile advertising. 1. It shall be unlaw-
4 ful for a person, corporation, partnership or association to initiate
5 the unsolicited transmission of telefacsimile messages promoting goods
6 or services for purchase by the recipient of such messages. For purposes
7 of this section, "telefacsimile" shall mean every process in which elec-
8 tronic signals are transmitted by telephone lines for conversion into
9 written text, WHETHER TO APPEAR ON PAPER OR ON A COMPUTER SCREEN OR
10 OTHER COMPUTER MEDIUM. This section shall not apply to telefacsimile
11 messages sent to a recipient with whom the initiator has had a prior
12 contractual or business relationship. Notwithstanding the above, it
13 shall be unlawful to initiate any telefacsimile message to a recipient
14 who has previously clearly indicated to the initiator by any verbal,
15 TELEPHONIC, written or electronic means that the recipient does not want
16 to receive telefacsimile messages from the initiator.
17 2. Every unsolicited telefacsimile message sent to a recipient shall
18 contain a notice that informs the recipient of the ability, granted by
19 subdivision one of this section, to prevent the transmission of future
20 unsolicited telefacsimile messages. Such notice shall be clear and
21 conspicuous and on the first page of the telefacsimile message and

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

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1 include a domestic contact telephone number and facsimile machine number
2 for the recipient to transmit such a request to the initiator.

3 If neither the required telephone number or facsimile machine number
4 is a toll-free number, a separate cost-free mechanism including a
5 website address or email address, for a recipient to transmit a request
6 pursuant to such notice to the sender of the message shall also be
7 provided. A local telephone number also shall constitute a cost-free
8 mechanism so long as recipients are local and will not incur any long
9 distance or other separate charges for calls made to such number. The
10 telephone and facsimile numbers and cost-free mechanism identified in
11 the notice must permit an individual or business to make a request to
12 prevent the transmission of future unsolicited advertisements twenty-
13 four hours a day, seven days a week.

14 3. [Any person who has received a telefacsimile transmission in
15 violation of this section may bring an action in his own name to recover
16 his actual damages or one hundred dollars, whichever is greater.] WHEN-
17 EVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE
18 MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF
19 NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEED-
20 ING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE RESPONDENT OF NOT
21 LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
22 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
23 JUSTICE THAT THE RESPONDENT HAS, IN FACT, VIOLATED THIS SECTION, AN
24 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND
25 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
26 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. WHENEVER THE COURT
27 SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT
28 MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR
29 EACH VIOLATION. IN CONNECTION WITH ANY SUCH 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 S 2. This act shall take effect on the ninetieth day after it shall
34 have become a law.