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

2132

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sen. KRUGER -- 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 and the state finance law, in relation to enacting the "do not offer statewide registry act"

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

Section 1. Short title. This act shall be known and may be cited as the "do not offer statewide registry act".

S 2. The general business law is amended by adding a new section 399-ff to read as follows:

S 399-FF. DIRECT MAIL MARKETING SOLICITATIONS; ESTABLISHMENT OF DO NOT OFFER STATEWIDE REGISTRY. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "BOARD" SHALL MEAN THE STATE CONSUMER PROTECTION BOARD.

B. "CUSTOMER" SHALL MEAN ANY NATURAL PERSON WHO IS A RESIDENT OF THIS STATE AND WHO IS OR MAY BE REQUIRED TO PAY FOR OR TO EXCHANGE CONSIDERATION FOR GOODS AND SERVICES OFFERED THROUGH DIRECT MAIL MARKETING.

C. "DIRECT MAIL MARKETER" SHALL MEAN ANY PERSON WHO, FOR FINANCIAL PROFIT OR COMMERCIAL PURPOSES IN CONNECTION WITH DIRECT MAIL MARKETING, MAILS SOLICITATIONS FOR THE SALE OF GOODS OR SERVICES TO A CUSTOMER WHEN THE CUSTOMER IS IN THIS STATE OR ANY PERSON WHO DIRECTLY CONTROLS OR SUPERVISES THE CONDUCT OF A DIRECT MAIL MARKETER. FOR THE PURPOSES OF THIS SECTION, "COMMERCIAL PURPOSES" SHALL MEAN THE SALE OR OFFER FOR SALE OF GOODS OR SERVICES. DIRECT MAIL MARKETER SHALL INCLUDE, BUT NOT BE LIMITED TO A CREDIT CARD COMPANY WHICH ENGAGES IN THE ISSUANCE OF ANY CREDIT CARD, CREDIT PLATE, CHARGE PLATE, COURTESY CARD, OR OTHER IDENTIFICATION CARD OR DEVICE WHICH MAY BE USED TO OBTAIN A CASH ADVANCE OR A LOAN OR CREDIT OR TO PURCHASE OR LEASE PROPERTY OR SERVICES ON THE CREDIT OF THE ISSUER OR OF THE HOLDER; AND SHALL NOT INCLUDE A DEBIT CARD ISSUED BY A BANK FOR THE TRANSFER, DEPOSIT AND WITHDRAWAL OF FUNDS TO AND FROM A CONSUMER'S BANK ACCOUNT.

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

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D. "DIRECT MAIL MARKETING" SHALL MEAN ANY MAILING WHICH CONTAINS SOLICITATIONS FOR THE SALE OF GOODS OR SERVICES AND IS DIRECTED TO A CUSTOMER AT THEIR RESIDENCE WITHIN THIS STATE BY PERSONAL DELIVERY TO A CUSTOMER AT HIS OR HER RESIDENCE.

E. "DIRECTOR" SHALL MEAN THE EXECUTIVE DIRECTOR OF THE STATE CONSUMER PROTECTION BOARD.

F. "DOING BUSINESS IN THIS STATE" SHALL MEAN MAILING OR CAUSING TO BE MAILED ANY DIRECT MAIL MARKETING SOLICITATION DELIVERED TO A RESIDENCE BY MEANS OF PERSONAL DELIVERY (I) FROM A LOCATION IN THIS STATE; OR (II) FROM A LOCATION OUTSIDE OF THIS STATE TO CONSUMERS RESIDING IN THIS STATE.

G. "GOODS AND SERVICES" SHALL MEAN ANY GOODS AND SERVICES, AND SHALL INCLUDE ANY REAL PROPERTY OR ANY TANGIBLE PERSONAL PROPERTY OR SERVICES OF ANY KIND.

H. "PERSON" SHALL MEAN ANY NATURAL PERSON, ASSOCIATION, PARTNERSHIP, FIRM, LIMITED LIABILITY COMPANY, CORPORATION AND ITS AFFILIATES OR SUBSIDIARIES OR OTHER BUSINESS ENTITY.

I. "UNSOLICITED DIRECT MAIL MARKETING" SHALL MEAN ANY DIRECT MAIL MARKETING MAILING OTHER THAN A MAILING:

(I) IN RESPONSE TO AN EXPRESS WRITTEN OR VERBAL REQUEST OF THE CUSTOMER; OR

(II) IN CONNECTION WITH AN ESTABLISHED BUSINESS RELATIONSHIP, WHICH HAS NOT BEEN TERMINATED BY EITHER PARTY; OR

(III) TO AN EXISTING CUSTOMER, UNLESS SUCH CUSTOMER HAS EXPRESSED TO THE DIRECT MAIL MARKETER THAT SUCH CUSTOMER NO LONGER WISHES TO RECEIVE ANY MORE DIRECT MARKETING MAIL FROM THAT MARKETER.

2. THE BOARD SHALL ESTABLISH AND MAINTAIN A "DO NOT OFFER STATEWIDE REGISTRY" WHICH SHALL CONTAIN A LIST OF CUSTOMERS WHO DO NOT WISH TO RECEIVE UNSOLICITED DIRECT MAIL MARKETING. THE BOARD MAY CONTRACT WITH A PRIVATE VENDOR TO ESTABLISH AND MAINTAIN SUCH REGISTRY.

3. NO DIRECT MAIL MARKETER SHALL MAIL OR CAUSE TO BE MAILED ANY UNSOLICITED DIRECT MARKETING MAIL TO ANY CUSTOMER MORE THAN THIRTY DAYS AFTER THE CUSTOMER'S NAME AND ADDRESS APPEARS ON THE THEN CURRENT QUARTERLY DO NOT OFFER STATEWIDE REGISTRY MADE AVAILABLE BY THE BOARD PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

4. THE BOARD SHALL PROVIDE NOTICE TO CUSTOMERS OF THE ESTABLISHMENT OF THE "DO NOT OFFER STATEWIDE REGISTRY." ANY CUSTOMER WHO WISHES TO BE INCLUDED IN SUCH REGISTRY SHALL NOTIFY THE BOARD BY CALLING A TOLL-FREE NUMBER PROVIDED BY THE BOARD, OR IN ANY OTHER SUCH MANNER AND AT SUCH TIMES AS THE BOARD MAY PRESCRIBE WHICH MAY INCLUDE NOTIFICATION VIA THE INTERNET. A CUSTOMER ON SUCH REGISTRY SHALL BE DELETED FROM SUCH REGISTRY UPON THE CUSTOMER'S WRITTEN REQUEST. THE BOARD SHALL UPDATE SUCH REGISTRY NOT LESS THAN QUARTERLY AND SHALL MAKE SUCH REGISTRY AVAILABLE TO DIRECT MAIL MARKETERS FOR SUCH FEE AS THE BOARD SHALL PRESCRIBE.

5. THE BOARD SHALL PRESCRIBE RULES AND REGULATIONS TO ADMINISTER THIS SECTION.

6. A. WHERE IT IS DETERMINED AFTER HEARING THAT ANY PERSON HAS VIOLATED ONE OR MORE PROVISIONS OF THIS SECTION, THE DIRECTOR OR ANY PERSON DEPUTIZED OR SO DESIGNATED BY HIM OR HER MAY ASSESS A FINE NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH VIOLATION.

B. EVERY PROCEEDING CONDUCTED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION SHALL BE SUBJECT TO THE STATE ADMINISTRATIVE PROCEDURE ACT.

C. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO RESTRICT ANY RIGHT WHICH ANY PERSON MAY HAVE UNDER ANY OTHER STATUTE OR AT COMMON LAW.

7. A PERSON SHALL NOT BE HELD LIABLE FOR VIOLATING THIS SECTION IF:

A. THE PERSON HAS OBTAINED A COPY OF AND UPDATED, QUARTERLY, THE DO NOT OFFER STATEWIDE REGISTRY AND HAS ESTABLISHED AND IMPLEMENTED WRITTEN POLICIES AND PROCEDURES RELATED TO THE REQUIREMENTS OF THIS SECTION;

B. THE PERSON HAS TRAINED HIS OR HER PERSONNEL IN THE REQUIREMENTS OF THIS SECTION;

C. THE PERSON MAINTAINS RECORDS DEMONSTRATING COMPLIANCE WITH PARAGRAPHS A AND B OF THIS SUBDIVISION AND THE REQUIREMENTS OF THIS SECTION; AND

D. ANY SUBSEQUENT UNSOLICITED DIRECT MARKETING MAIL IS THE RESULT OF ERROR.

S 3. Subdivisions 2 and 3 of section 97-www of the state finance law, as added by chapter 547 of the laws of 2000, are amended to read as follows:

2. Such account shall consist of all fees and penalties received by the state consumer protection board pursuant to article ten-B of the personal property law, [section] SECTIONS three hundred ninety-nine-z AND THREE HUNDRED NINETY-NINE-FF of the general business law and any additional monies appropriated, credited or transferred to such account by the Legislature. Any interest earned by the investment of monies in such account shall be added to such account, become part of such account, and be used for the purposes of such account.

3. Monies in the account shall be available to the state consumer protection board for the payment of costs of producing and distributing educational materials and conducting educational activities relating to the promotion of the "[unsolicited] NO telemarketing sales [call] CALLS STATEWIDE registry" AND THE "DO NOT OFFER STATEWIDE REGISTRY" and all related costs and expenditures incurred in the administration of [section] SECTIONS three hundred ninety-nine-z AND THREE HUNDRED NINETY-NINE-FF of the general business law and article ten-B of the personal property law.

S 4. Separability clause. If any part or provision of this act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof to other persons or circumstances.

S 5. This act shall take effect January 1, 2010; provided that any rules and regulations necessary for the timely implementation of this act on its effective date are authorized and directed to be promulgated on or before such effective date.