

3331--B

Cal. No. 568

2009-2010 Regular Sessions

I N S E N A T E

March 16, 2009

Introduced by Sens. FOLEY, DIAZ, C. JOHNSON, KRUEGER, MONSERRATE, ONORATO, OPPENHEIMER, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the general business law, in relation to prohibiting any person, firm or corporation from soliciting vehicle warranty policies to owners of motor vehicles

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

1 Section 1. The general business law is amended by adding a new section
2 399-00 to read as follows:
3 S 399-00. DECEPTIVE SOLICITATION OF VEHICLE WARRANTY POLICIES. 1. IT
4 SHALL BE UNLAWFUL FOR ANY PERSON, FIRM OR CORPORATION TO DIRECTLY OR
5 INDIRECTLY REPRESENT IN ANY MANNER, WHETHER BY WRITTEN SOLICITATION OR
6 TELEMARKETING, A FALSE, DECEPTIVE OR MISLEADING STATEMENT IN REGARD TO:
7 A. SUCH PERSON'S, FIRM'S OR CORPORATION'S AFFILIATION WITH A VEHICLE
8 OWNER'S CURRENT WARRANTY POLICY PROVIDER;
9 B. SUCH PERSON'S, FIRM'S OR CORPORATION'S POSSESSION OF INFORMATION
10 REGARDING SUCH VEHICLE OWNER'S WARRANTY POLICY;
11 C. THE EXPIRATION OF SUCH VEHICLE OWNER'S WARRANTY POLICY; OR
12 D. A REQUIREMENT THAT SUCH VEHICLE OWNER REGISTER FOR A NEW WARRANTY
13 POLICY WITH SUCH PERSON, FIRM OR CORPORATION IN ORDER TO MAINTAIN COVER-
14 AGE OF SUCH VEHICLE OWNER'S CURRENT WARRANTY POLICY.
15 2. WHEREVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, AN APPLICATION
16 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
17 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL

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

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1 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
2 NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTINUANCE OF SUCH
3 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
4 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN
5 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND
6 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
7 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. WHENEVER THE COURT
8 SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT
9 MAY IMPOSE A CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR EACH VIOLATION.
10 THE COURT MAY IMPOSE A CIVIL PENALTY OF ONE THOUSAND DOLLARS FOR EACH
11 VIOLATION, IF THE COURT FINDS THE DEFENDANT KNOWINGLY VIOLATED THIS
12 SECTION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY
13 GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE
14 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-
15 TICE LAW AND RULES.

16 3. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT RIGHTS OR REMEDIES
17 WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY GENERAL.

18 S 2. Separability clause; construction. If any part or provision of
19 this act or the application thereof to any person or circumstances be
20 adjudged invalid by any court of competent jurisdiction, such judgment
21 shall be confined in its operations to the part, provision or applica-
22 tion directly involved in the controversy in which such judgment shall
23 have been rendered and shall not affect or impair the validity of the
24 remainder of this section or the application thereof to other persons or
25 circumstances.

26 S 3. This act shall take effect on the sixtieth day after it shall
27 have become a law.