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

10357

I N A S S E M B L Y

May 24, 2012

Introduced by M. of A. MILLMAN -- read once and referred to the Committee on Aging

AN ACT to amend the general business law, in relation to requiring disclosures in advertisements using a senior specific designation

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 350-b-1 to read as follows:

S 350-B-1. DISCLOSURES REQUIRED IN ADVERTISEMENTS USING A SENIOR SPECIFIC DESIGNATION. 1. FOR PURPOSES OF THIS SECTION, "SENIOR SPECIFIC DESIGNATION" SHALL MEAN A TITLE, PROFESSIONAL DESIGNATION, CREDENTIAL, CERTIFICATION, OR PROFESSIONAL DESCRIPTION THAT INDICATES THE PERSON HAS EXPERTISE OR TRAINING IN ISSUES SPECIFICALLY RELATED TO SENIORS IN THEIR FIELD AND HAS:

(A) BEEN REGISTERED OR LICENSED BY A MUNICIPALITY; OR

(B) RECEIVED PERMISSION TO USE SUCH TITLE, PROFESSIONAL DESIGNATION, OR PROFESSIONAL DESCRIPTION FROM AN INDEPENDENT OR INDUSTRY ORGANIZATION.

2. (A) ANY PERSON OR BUSINESS WHO USES A SENIOR SPECIFIC DESIGNATION IN MAKING REPRESENTATIONS FOR THE PURPOSE OF INDUCING, OR WHICH ARE LIKELY TO INDUCE, DIRECTLY OR INDIRECTLY, THE PURCHASE OF THE INDIVIDUAL'S SERVICES SHALL CLEARLY AND PROMINENTLY DISCLOSE, IN ANY ADVERTISEMENT AND IN WRITING TO ANY PROSPECTIVE CLIENT AT THE INITIAL MEETING OR CONSULTATION WITH SUCH PROSPECTIVE CLIENT, THE BASIS OR SOURCE OF SUCH SENIOR SPECIFIC DESIGNATION, INCLUDING WHETHER THE SENIOR SPECIFIC DESIGNATION WAS CREATED BY THE PERSON OR BUSINESS USING IT. FOR THE PURPOSES OF THIS SECTION, "CLEARLY AND PROMINENTLY" MEANS:

(1) IN WRITTEN COMMUNICATIONS, INCLUDING PRINT AND THOSE MADE THROUGH AN ELECTRONIC MEDIUM (SUCH AS VIDEO AND INTERACTIVE MEDIA INCLUDING, BUT NOT LIMITED TO, THE INTERNET, ONLINE SERVICES, AND ELECTRONIC MAIL), THE MESSAGE SHALL BE IN A TYPE SIZE SUFFICIENTLY NOTICEABLE FOR AN ORDINARY CONSUMER TO READ AND COMPREHEND IT, IN TYPE THAT CONTRASTS WITH THE BACKGROUND AGAINST WHICH IT APPEARS; AND

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

LBD15935-01-2

(2) IN ORAL COMMUNICATIONS, THE MESSAGE SHALL BE DELIVERED IN A VOLUME SUFFICIENT FOR AN ORDINARY CONSUMER TO HEAR IT AND COMPREHEND IT. SUCH MESSAGE SHALL BE IN UNDERSTANDABLE LANGUAGE AND SYNTAX REGARDLESS OF HOW THE MESSAGE IS DISSEMINATED.

(B) IF ANY COMMUNICATION IS PRESENTED SOLELY THROUGH ORAL, WRITTEN, OR VISUAL MEANS, THE MESSAGE DISSEMINATED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE MADE THROUGH THE SAME MEANS.

(C) NO PERSON OR BUSINESS SHALL MAKE ANY COMMUNICATION THAT MITIGATES ANY MESSAGE DISSEMINATED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION OR THAT IS CONTRARY TO OR INCONSISTENT WITH SUCH MESSAGE. THE REQUIREMENTS OF THIS SUBDIVISION SUPPLEMENT, AND SHALL NOT BE CONSTRUED TO LIMIT, THE OBLIGATIONS OF ANY PROFESSIONAL REGISTERED OR LICENSED PURSUANT TO ANY OTHER SECTION OF LAW AND REGULATIONS THEREUNDER, NOR SHALL THEY BE CONSTRUED TO AUTHORIZE THE PRACTICE OF ANY LICENSED PROFESSION NOR THE OFFER OF PROFESSIONAL SERVICES BY ANY UNLICENSED PERSON.

3. IN ADDITION TO ANY CIVIL PENALTY AVAILABLE UNDER SECTION THREE HUNDRED FIFTY-D OF THIS ARTICLE, WHENEVER THERE SHALL BE AN ACTUAL VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN INJUNCTION, UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN SUCH ACTUAL OR THREATENED VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT IS IN FACT ASSUMING, ADOPTING OR USING SUCH SENIOR SPECIFIC DESIGNATION OR IS ABOUT TO ASSUME, ADOPT OR USE SUCH SENIOR SPECIFIC DESIGNATION AND THAT THE ASSUMPTION, ADOPTION OR USE OF SUCH SENIOR SPECIFIC DESIGNATION MAY DECEIVE OR MISLEAD THE PUBLIC, AN INJUNCTION MAY BE ISSUED BY SAID COURT OR JUSTICE ENJOINING AND RESTRAINING SUCH ACTUAL VIOLATION WITHOUT REQUIRING PROOF THAT ANY PERSON HAS IN FACT BEEN DECEIVED OR MISLED THEREBY.

S 2. This act shall take effect immediately.