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

S. 336 A. 145

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 5, 2011

IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

IN ASSEMBLY -- Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to unordered goods and to repeal paragraph a of subdivision 2 of section 396 of such law relating thereto

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

Section 1. Paragraph a of subdivision 2 of section 396 of the general business law is REPEALED and a new paragraph a is added to read as follows:

A. (1) NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION, OR AGENT OR EMPLOYEE THEREOF, SHALL, IN ANY MANNER, OR BY ANY MEANS, OFFER FOR SALE, LEASE, OR CHARGE ANY FEE FOR ANY TANGIBLE OR INTANGIBLE GOODS, OR SERVICES WHICH HAVE NOT BEEN ACTUALLY ORDERED OR REQUESTED BY THE RECIPIENT, EITHER ORALLY OR IN WRITING. THE RECEIPT OF ANY SUCH UNORDERED GOODS, OR FURNISHING OF SUCH SERVICES SHALL FOR ALL PURPOSES BE DEEMED AN UNCONDITIONAL GIFT TO THE RECIPIENT WHO MAY USE OR DISPOSE OF THE SAME IN ANY MANNER HE OR SHE SEES FIT WITHOUT ANY OBLIGATION ON HIS OR HER PART TO THE SENDER.

(2) NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION, OR AGENT OR EMPLOYEE THEREOF, SHALL BILL OR OTHERWISE REQUEST PAYMENT FOR GOODS OR SERVICES NOT ACTUALLY ORDERED OR REQUESTED BY THE RECIPIENT.

(3) NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION, OR AGENT OR EMPLOYEE THEREOF, SHALL PROPOSE A CONTRACT OR CONTRACT TERM WHICH PROVIDES FOR A FEE OR CHARGE FOR GOODS OR SERVICES NOT ACTUALLY ORDERED OR REQUESTED BY THE RECIPIENT AND WHICH PURPORTEDLY MAKES THE RECIPIENT

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

LBD01539-01-1

LEGALLY BOUND TO MAKE PAYMENT FOR SUCH GOODS OR SERVICES UPON THE RECIPIENT'S FAILURE TO RESPOND WITHIN A SPECIFIED PERIOD OF TIME. ANY SUCH PROPOSAL SHALL BE DEEMED TO BE VOID AS AGAINST PUBLIC POLICY AND WHOLLY UNENFORCEABLE.

(4) ANY TANGIBLE GOODS SENT WHICH HAVE NOT BEEN ACTUALLY ORDERED OR REQUESTED BY THE RECIPIENT SHALL BE PROMINENTLY MARKED UPON THE CONTAINER THEREOF IN BOLD LETTERS AS FOLLOWS: "THIS IS A GIFT. PAYMENT NOT REQUIRED FOR THIS ITEM."

(5) AT LEAST THIRTY DAYS PRIOR TO THE SENDING OF ANY INTANGIBLE GOODS OR FURNISHING OF ANY SERVICES OFFERED FOR SALE OR LEASE WHICH HAVE NOT BEEN ACTUALLY ORDERED OR REQUESTED BY THE RECIPIENT, THE SENDER SHALL MAIL OR DELIVER A WRITTEN NOTICE SEPARATE FROM ANY OTHER DOCUMENT MAILED OR DELIVERED TO THE RECIPIENT, CONTAINING A SHORT, CLEAR AND COHERENT STATEMENT, IN A SIZE EQUAL TO AT LEAST TEN-POINT BOLD TYPE, THE NAME AND A SHORT DESCRIPTION OF THE GOOD OR SERVICE TO BE SENT OR FURNISHED, THE APPROXIMATE DATE SUCH GOOD OR SERVICE IS TO BE SENT OR FURNISHED, THAT THE GOOD OR SERVICE IS A GIFT, AND THAT PAYMENT IS NOT REQUIRED FOR THIS GOOD OR SERVICE.

(6) THIS PARAGRAPH SHALL NOT APPLY TO A MEMBERSHIP OR CLUB ARRANGEMENT WHICH IS REGULATED BY THE FEDERAL TRADE COMMISSION PURSUANT TO 16 CFR 425 AS SUCH SECTION MAY FROM TIME TO TIME BE AMENDED, OR OTHER CONTRACTUAL PLANS OR ARRANGEMENTS SUCH AS CONTINUITY PLANS, SUBSCRIPTION ARRANGEMENTS, STANDING ORDER ARRANGEMENTS, SUPPLEMENTS AND SERIES ARRANGEMENTS UNDER WHICH THE SELLER PERIODICALLY SHIPS MERCHANDISE TO A CONSUMER WHO HAS CONSENTED IN ADVANCE TO RECEIVE SUCH MERCHANDISE ON A PERIODIC BASIS.

(7) THIS PARAGRAPH SHALL NOT APPLY TO OFFERS FOR SALE OR LEASE OF UNORDERED OR UNREQUESTED SERVICES IN CONNECTION WITH THE RENEWAL OR EXTENSION OF AN EXISTING CONTRACT, PROVIDED SUCH OFFER WAS OTHERWISE PERMITTED BY LAW OR THE TERMS OF SUCH CONTRACT AND FURTHER PROVIDED THAT NO UNORDERED OR UNREQUESTED SERVICE IS OFFERED IN CONNECTION WITH THE RENEWAL OR EXTENSION FOR A FEE OR CHARGE IN ADDITION TO ANY SERVICE OR SERVICES WHICH WERE THE SUBJECT OF SUCH CONTRACT.

(8) ANY RECIPIENT WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS PARAGRAPH MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR FIFTY DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. IN ANY ACTION UNDER THIS SUBPARAGRAPH, THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF. ANY RECIPIENT WHO HAS RECEIVED ANY BILL STATEMENT OR REQUEST FOR PAYMENT WITH RESPECT TO ANY GOODS OR SERVICES DEEMED TO BE AN UNCONDITIONAL GIFT UNDER THIS PARAGRAPH SHALL BE DEEMED TO BE INJURED UNDER THIS SUBPARAGRAPH.

(9) NOTHING IN THIS PARAGRAPH SHALL IN ANY WAY LIMIT THE RIGHTS OR REMEDIES WHICH ARE OTHERWISE AVAILABLE TO A RECIPIENT UNDER ANY OTHER PROVISION OF LAW, INCLUDING, BUT NOT LIMITED TO, THE UNIFORM COMMERCIAL CODE AND ARTICLE TWENTY-TWO-A OF THIS CHAPTER.

(10) WAIVER OF RIGHTS BY ANY RECIPIENT UNDER THIS PARAGRAPH SHALL BE DEEMED CONTRARY TO PUBLIC POLICY AND SHALL BE UNENFORCEABLE AND VOID.

(11) FOR THE PURPOSES OF THIS PARAGRAPH: (I) THE TERM "TANGIBLE GOOD" SHALL MEAN ANY GOOD SENT TO THE RECIPIENT BY MEANS OF A CONTAINER; AND

(II) THE TERM "INTANGIBLE GOOD" SHALL MEAN ANY GOOD WHICH IS NOT A TANGIBLE GOOD.

S 2. This act shall take effect immediately.