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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. MAISEL, COLTON, LUPARDO, ENGLEBRIGHT, SCHIMEL, ROBINSON, ROBERTS, HOOPER, P. RIVERA, ROSENTHAL, LINARES -- Multi-Sponsored by -- M. of A. ARROYO, BOYLAND, CALHOUN, COOK, M. MILLER, THIELE, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- reference changed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the general business law, in relation to telephone directory reduction and recycling

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

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 29 to read as follows:

TITLE 29

TELEPHONE DIRECTORY REDUCTION AND RECYCLING

SECTION 27-2901. DEFINITIONS.

27-2903. DISTRIBUTOR RESPONSIBILITIES

S 27-2901. DEFINITIONS. AS USED IN THIS TITLE:

1. "DISTRIBUTOR" MEANS ANY PERSON OR ENTITY ENGAGED IN THE DISTRIBUTION OF TELEPHONE DIRECTORIES TO THE GENERAL PUBLIC.

2. "TELEPHONE DIRECTORY" MEANS A PRINTED PUBLICATION LISTING:

A. THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF BUSINESSES BY TYPE, AND CONTAINING ADVERTISEMENTS PROMOTING THOSE BUSINESSES OR THE PRODUCTS THEY SELL; AND/OR

B. THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF INDIVIDUALS, BUSINESSES AND GOVERNMENT LISTINGS IN ALPHABETICAL ORDER.

S 27-2903. DISTRIBUTOR RESPONSIBILITIES.

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

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1. EVERY DISTRIBUTOR SHALL ENSURE THAT EACH TELEPHONE DIRECTORY PROVIDED TO THE GENERAL PUBLIC SHALL:

A. TO THE MAXIMUM EXTENT PRACTICABLE BE PRINTED ON PAPER THAT IS RECYCLABLE AND CONTAINS NOT LESS THAN THIRTY PERCENT POST-CONSUMER RECYCLED FIBER;

B. TO THE MAXIMUM EXTENT PRACTICABLE BE PRINTED WITH INKS THAT CONTAIN NO HEAVY METALS OR OTHER TOXIC MATERIALS;

C. BE BOUND WITH MATERIALS THAT POSE NO UNREASONABLE BARRIERS TO RECYCLING THE TELEPHONE DIRECTORY;

D. INCLUDE A CONSPICUOUS NOTICE WHICH SHALL BE CONSISTENT WITH ANY GUIDELINES OF THE DEPARTMENT THAT PROVIDES INFORMATION ON THE APPROPRIATE MEANS OF RECYCLING DISCARDED TELEPHONE DIRECTORIES;

E. INCLUDE A CONSPICUOUS NOTICE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION THREE HUNDRED THIRTY-SIX OF THE GENERAL BUSINESS LAW, THAT INDICATES HOW A CONSUMER MAY DECLINE TO RECEIVE FUTURE DIRECTORIES.

S 2. Section 336 of the general business law is amended by adding a new subdivision 4 to read as follows:

4. (A) EVERY TELEPHONE DIRECTORY HEREAFTER DISTRIBUTED TO THE MEMBERS OF THE GENERAL PUBLIC IN THIS STATE OR IN ANY PORTION THEREOF WHICH LISTS THE CALLING NUMBERS OF TELEPHONES OF ANY TELEPHONE EXCHANGE LOCATED IN THIS STATE SHALL CONTAIN A CONSPICUOUS NOTICE PROVIDING INFORMATION IN CLEAR, CONCISE LANGUAGE THAT THE CONSUMER MAY "OPT-OUT" BY DECLINING RECEIPT OF FUTURE PRINT DIRECTORIES. SUCH NOTICE SHALL ALSO INCLUDE THE TOLL-FREE TELEPHONE NUMBER AND INTERNET WEB SITE ADDRESS THAT AN INDIVIDUAL MAY USE TO DECLINE RECEIPT OF FUTURE PRINT DIRECTORIES. IN ADDITION, THE DISTRIBUTOR MAY INCLUDE A PREPAID POSTCARD WITH THE DIRECTORY THAT MAY BE USED TO DECLINE RECEIPT OF FUTURE PRINT DIRECTORIES.

(B) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO THE DISTRIBUTION OF RESIDENTIAL WHITE PAGE DIRECTORIES BY A TELEPHONE CORPORATION PROVIDING LOCAL EXCHANGE SERVICE IN THIS STATE THAT, PURSUANT TO A WAIVER FROM THE PUBLIC SERVICE COMMISSION OF ITS RULES REGARDING DISTRIBUTION OF SUCH DIRECTORIES, IS AUTHORIZED TO DISCONTINUE DISTRIBUTION OF PRINTED DIRECTORIES TO CUSTOMERS WHO HAVE NOT "OPTED-IN" BY INDICATING A PREFERENCE TO RECEIVE SUCH PRINTED DIRECTORIES, PROVIDED THAT THE WAIVER INCLUDES SUCH CONDITIONS AS THE COMMISSION DEEMS APPROPRIATE TO ENSURE THE PROVISION OF NOTIFICATION THAT REACHES ALL CUSTOMERS OF THEIR OPTION TO RECEIVE DELIVERY OF SUCH DIRECTORIES.

S 3. The general business law is amended by adding a new section 336-aa to read as follows:

S 336-AA. RESPONSIBILITIES OF DISTRIBUTORS OF TELEPHONE DIRECTORIES. 1. UPON NOTIFICATION THAT DELIVERY OF A PRINT TELEPHONE DIRECTORY HAS BEEN DECLINED AS PROVIDED IN SECTION THREE HUNDRED THIRTY-SIX OF THIS ARTICLE, THE DISTRIBUTOR SHALL DISCONTINUE DIRECTORY DELIVERY TO THE DECLINING CONSUMER. A DISTRIBUTOR MAY COMPLY WITH THIS SUBDIVISION BY REDUCING THE NUMBER OF DIRECTORIES DELIVERED TO A MULTIPLE DWELLING BY THE NUMBER OF OCCUPANTS DECLINING SUCH DELIVERY.

2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, A DISTRIBUTOR MAY RESUME DIRECTORY DELIVERY TO AN INDIVIDUAL WHO HAS PREVIOUSLY DECLINED DELIVERY, PROVIDED THAT SUCH INDIVIDUAL REQUESTS RESUMPTION OF DELIVERY BY USE OF THE DISTRIBUTOR'S TOLL-FREE TELEPHONE NUMBER OR INTERNET WEB SITE ADDRESS OR BY OTHER WRITTEN REQUEST.

3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION OR OF SUBDIVISION FOUR OF SECTION THREE HUNDRED THIRTY-SIX OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE

AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN FIVE THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

S 4. This act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.