

8376

2011-2012 Regular Sessions

I N A S S E M B L Y

June 15, 2011

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

AN ACT to amend the general business law, in relation to the identity theft protection services

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

1 Section 1. Section 393-b of the general business law, as added by
2 chapter 433 of the laws of 2005, is amended to read as follows:
3 S 393-b. [Written solicitation] CREDIT CARD PROTECTION SERVICES. 1.
4 [Any written] FOR THE PURPOSES OF THIS SECTION:
5 (A) "CLEARLY AND PROMINENTLY" MEANS: (I) IN WRITTEN COMMUNICATIONS,
6 INCLUDING PRINT AND THOSE MADE THROUGH AN ELECTRONIC MEDIUM (SUCH AS
7 VIDEO AND INTERACTIVE MEDIA INCLUDING, BUT NOT LIMITED TO, THE INTERNET,
8 ONLINE SERVICES, AND ELECTRONIC MAIL) THE MESSAGE SHALL BE IN A TYPE
9 SIZE SUFFICIENTLY NOTICEABLE FOR AN ORDINARY CONSUMER TO READ AND
10 COMPREHEND IT, IN TYPE THAT CONTRASTS WITH THE BACKGROUND AGAINST WHICH
11 IT APPEARS; AND (II) IN ORAL COMMUNICATIONS, THE MESSAGE SHALL BE DELIV-
12 ERED IN A VOLUME AND CADENCE SUFFICIENT FOR AN ORDINARY CONSUMER TO HEAR
13 IT AND COMPREHEND IT. IF ANY COMMUNICATION IS PRESENTED SOLELY THROUGH
14 ORAL, WRITTEN, OR VISUAL MEANS, THE MESSAGE SHALL BE MADE THROUGH THE
15 SAME MEANS. REGARDLESS OF THE MEDIUM USED TO DISSEMINATE IT, THE MESSAGE
16 SHALL BE IN UNDERSTANDABLE LANGUAGE AND SYNTAX. NOTHING CONTRARY TO,
17 INCONSISTENT WITH, OR IN MITIGATION OF THE MESSAGE SHALL BE USED IN ANY
18 COMMUNICATION.
19 (B) "CREDIT CARD PROTECTION SERVICE" MEANS A SERVICE TO PROTECT,
20 INDEMNIFY, OR REIMBURSE THE CREDIT CARD HOLDER AGAINST THE LOSS OR
21 MISUSE OF THE CREDIT CARD. SUCH TERM SHALL INCLUDE, BUT NOT BE LIMITED
22 TO, SERVICES THAT OFFER TO OBTAIN ACCESS TO CREDIT REPORTS, PROVIDE AN
23 EXPLANATION OF CREDIT ENTRIES ON THE REPORT, IDENTIFY THOSE ENTITIES
24 THAT HAVE ACCESSED THE REPORT, AND PROVIDE CREDIT CARD PROTECTION SEC-
25 URITY SERVICES.

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

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1 2. IN ANY solicitation to enter into an agreement for various credit
2 card protection services THE ENTITY OFFERING SUCH SERVICES shall CLEARLY
3 AND PROMINENTLY:

4 (A) disclose that the purchase of credit card protection services or
5 the renewal thereof is not required for a consumer to secure or retain
6 his or her credit card; and

7 (B) BY MEANS OF a concise statement [regarding] INFORM THE CONSUMER OF
8 his or her rights that already exist free of charge under the "Fair
9 Credit Billing Act" and the regulations thereunder, as such acts and
10 regulations may from time to time be amended. [A credit card protection
11 service means a service to protect, indemnify, or reimburse the credit
12 card holder against the loss or misuse of the credit card. Such term
13 shall include services provided along with credit card protection
14 services for the same price, including, but not be limited to, access to
15 credit reports, an explanation of credit entries on the report, the
16 identification of those who have accessed the report, and insurance and
17 security services.] No agreement for CREDIT CARD PROTECTION services
18 shall provide that services will be automatically renewed on an annual
19 basis and the consumer billed, unless the consumer in the expiring
20 agreement is notified not more than sixty days and not less than fifteen
21 days prior to the termination of the existing agreement by mail of the
22 credit protection service provider's intention to automatically renew
23 the agreement.

24 [2.] 3. Whenever there shall be a violation of this section, applica-
25 tion may be made by the attorney general in the name of the people of
26 the state of New York to a court or justice having jurisdiction by a
27 special proceeding to issue an injunction, and upon notice to the
28 defendant of not less than five days, to enjoin and restrain the contin-
29 uance of such violations; and if it shall appear to the satisfaction of
30 the court or justice that the defendant has, in fact, violated this
31 section, an injunction may be issued by such court or justice, enjoining
32 and restraining any further violation, without requiring proof that any
33 person has, in fact, been injured or damaged thereby. In any such
34 proceeding, the court may make allowances to the attorney general as
35 provided in paragraph six of subdivision (a) of section eighty-three
36 hundred three of the civil practice law and rules, and direct restitu-
37 tion. Whenever the court shall determine that a violation of this
38 section has occurred, the court may impose a civil penalty of not more
39 than one thousand dollars for each violation. In connection with any
40 such proposed application, the attorney general is authorized to take
41 proof and make a determination of the relevant facts and to issue
42 subpoenas in accordance with the civil practice law and rules.

43 S 2. The general business law is amended by adding a new section 393-
44 bb to read as follows:

45 S 393-BB. IDENTITY THEFT PROTECTION SERVICES. 1. FOR THE PURPOSES OF
46 THIS SECTION:

47 (A) "CLEARLY AND PROMINENTLY" MEANS: (I) IN WRITTEN COMMUNICATIONS,
48 INCLUDING PRINT AND THOSE MADE THROUGH AN ELECTRONIC MEDIUM (SUCH AS
49 VIDEO AND INTERACTIVE MEDIA INCLUDING, BUT NOT LIMITED TO, THE INTERNET,
50 ONLINE SERVICES, AND ELECTRONIC MAIL) THE MESSAGE SHALL BE IN A TYPE
51 SIZE SUFFICIENTLY NOTICEABLE FOR AN ORDINARY CONSUMER TO READ AND
52 COMPREHEND IT, IN TYPE THAT CONTRASTS WITH THE BACKGROUND AGAINST WHICH
53 IT APPEARS; AND (II) IN ORAL COMMUNICATIONS, THE MESSAGE SHALL BE DELIV-
54 ERED IN A VOLUME AND CADENCE SUFFICIENT FOR AN ORDINARY CONSUMER TO HEAR
55 IT AND COMPREHEND IT. IF ANY COMMUNICATION IS PRESENTED SOLELY THROUGH
56 ORAL, WRITTEN, OR VISUAL MEANS, THE MESSAGE SHALL BE MADE THROUGH THE

1 SAME MEANS. REGARDLESS OF THE MEDIUM USED TO DISSEMINATE IT, THE MESSAGE
2 SHALL BE IN UNDERSTANDABLE LANGUAGE AND SYNTAX. NOTHING CONTRARY TO,
3 INCONSISTENT WITH, OR IN MITIGATION OF THE MESSAGE SHALL BE USED IN ANY
4 COMMUNICATION.

5 (B) "IDENTITY THEFT PROTECTION SERVICE" MEANS A SERVICE MARKETING,
6 DESCRIBED AND SOLD AS A SERVICE TO PROTECT A CONSUMER FROM IDENTITY
7 THEFT. SUCH TERM SHALL INCLUDE, BUT NOT BE LIMITED TO, SERVICES THAT:

8 (I) NOTIFY CONSUMERS WHEN NEW CREDIT IS OPENED IN HIS OR HER NAME;

9 (II) MONITOR THE CONSUMER'S CREDIT REPORT FOR ANY CHANGES THAT MAY
10 INDICATE FRAUDULENT ACTIVITY AND NOTIFY THE CONSUMER OF SUCH ACTIVITY;

11 (III) PROVIDE THE IDENTIFICATION OF THOSE WHO HAVE OBTAINED ACCESS TO
12 THE CONSUMER'S CREDIT REPORT;

13 (IV) PLACE, RENEW, OR UPDATE FRAUD ALERTS OR SECURITY FREEZES; OR

14 (V) ASSIST CONSUMERS BY OBTAINING A LIMITED POWER OF ATTORNEY FROM THE
15 CONSUMER. SUCH TERM SHALL NOT INCLUDE IDENTITY THEFT GROUP INSURANCE
16 POLICIES ISSUED PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED
17 FIFTY-ONE OF THE INSURANCE LAW.

18 2. (A) IN ANY SOLICITATION TO ENTER INTO AN AGREEMENT FOR IDENTITY
19 THEFT PROTECTION SERVICES THE ENTITY OFFERING SUCH SERVICES SHALL CLEAR-
20 LY AND PROMINENTLY, BY MEANS OF A CONCISE STATEMENT, INFORM THE CONSUMER
21 OF HIS OR HER RIGHTS THAT ALREADY EXIST FREE OF CHARGE UNDER THE FEDERAL
22 FAIR CREDIT REPORTING ACT AND THE REGULATIONS THEREUNDER AND ARTICLE
23 TWENTY-FIVE OF THIS CHAPTER, AS SUCH ACTS AND REGULATIONS MAY FROM TIME
24 TO TIME BE AMENDED.

25 (B) NO AGREEMENT FOR IDENTITY THEFT PROTECTION SERVICES SHALL PROVIDE
26 THAT SERVICES WILL BE AUTOMATICALLY RENEWED ON AN ANNUAL BASIS AND THE
27 CONSUMER BILLED, UNLESS THE CONSUMER IN THE EXPIRING AGREEMENT IS NOTI-
28 FIED NOT MORE THAN SIXTY DAYS AND NOT LESS THAN FIFTEEN DAYS PRIOR TO
29 THE TERMINATION OF THE EXISTING AGREEMENT BY MAIL OF THE IDENTITY THEFT
30 PROTECTION SERVICE PROVIDER'S INTENTION TO AUTOMATICALLY RENEW THE
31 AGREEMENT.

32 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, APPLICATION
33 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
34 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL
35 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
36 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
37 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
38 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN
39 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND
40 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
41 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
42 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
43 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
44 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
45 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
46 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
47 THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY
48 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE
49 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
50 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

51 S 3. This act shall take effect on the ninetieth day after it shall
52 have become a law; provided, however that effective immediately, the
53 addition, amendment and/or repeal of any rule or regulation necessary
54 for the implementation of this act on its effective date are authorized
55 and directed to be made and completed on or before such effective date.