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

7179

I N S E N A T E

May 1, 2012

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

AN ACT to amend the general business law, in relation to the distribution of circular advertisements

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 397-b to read as follows:

S 397-B. DISTRIBUTION OF CIRCULARS. 1. FOR THE PURPOSES OF THIS SECTION:

A. "CONSUMER" SHALL MEAN ANY NATURAL PERSON WHO MAY BE REQUIRED TO PAY FOR OR TO EXCHANGE CONSIDERATION FOR GOODS AND SERVICES OFFERED THROUGH CIRCULAR ADVERTISEMENTS.

B. "CIRCULAR ADVERTISEMENT" SHALL MEAN ANY PAMPHLET, FORM, DOCUMENT OR COMMERCIAL ADVERTISEMENT PRINTED ON ANY FORM OF MEDIA, INCLUDING, BUT NOT LIMITED TO LEAFLETS, LETTERS, PAMPHLETS AND MENUS, THEREAFTER DISTRIBUTED TO TWO OR MORE CONSUMERS THROUGH A PLAN, PROGRAM OR CAMPAIGN CONDUCTED TO INDUCE PAYMENT OR THE EXCHANGE OF ANY OTHER CONSIDERATION FOR ANY GOODS OR SERVICES, OR TO PROMOTE SOME PRODUCT OR SERVICE. THIS DEFINITION SHALL NOT INCLUDE ADVERTISEMENTS DISTRIBUTED BY THE UNITED STATES POSTAL SERVICE OR THOSE ADVERTISEMENTS REGULARLY INCLUDED WITH ANY OTHER MEDIA SUBSCRIPTION, INCLUDING, BUT NOT LIMITED TO, NEWSPAPERS, PERIODICALS AND MAGAZINES.

C. "PERSON" SHALL MEAN ANY NATURAL PERSON, ASSOCIATION, PARTNERSHIP, FIRM, CORPORATION OR OTHER BUSINESS ENTITY.

D. "ADVERTISER" SHALL MEAN ANY NATURAL PERSON, ASSOCIATION, PARTNERSHIP, FIRM, CORPORATION OR OTHER BUSINESS ENTITY THAT DELIVERS CIRCULAR ADVERTISEMENTS TO A CONSUMER FOR A COMMERCIAL PURPOSE.

E. "COMMERCIAL PURPOSE" SHALL MEAN HAVING THE GOAL OR END OF BUYING OR SELLING OF A GOOD OR SERVICE FOR THE PURPOSE OF MAKING A PROFIT.

F. "UNSOLICITED CIRCULAR DELIVERY" MEANS ANY DELIVERY OF A CIRCULAR ADVERTISEMENT, BY AN ADVERTISER OR EMPLOYEE THEREOF, TO A CONSUMER, OTHER THAN A DELIVERY MADE:

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

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(I) IN RESPONSE TO AN EXPRESS WRITTEN OR VERBAL REQUEST OF THE CONSUMER RECEIVING SUCH CIRCULAR; OR

(II) IN CONNECTION WITH AN ESTABLISHED BUSINESS OR CUSTOMER RELATIONSHIP, WHICH HAS NOT BEEN TERMINATED BY EITHER PARTY, UNLESS SUCH CONSUMER HAS STATED TO THE ADVERTISER THAT SUCH CONSUMER NO LONGER WISHES TO RECEIVE THE CIRCULAR ADVERTISEMENTS OF SUCH ADVERTISER.

G. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OF STATE.

2. A. THE DEPARTMENT SHALL ESTABLISH, MANAGE AND MAINTAIN A REGISTRY WHICH SHALL CONTAIN A LIST OF CONSUMERS WHO DO NOT WISH TO RECEIVE UNSOLICITED CIRCULAR DELIVERIES.

B. THE REGISTRY SHALL BE UPDATED ON A QUARTERLY BASIS, OR MORE FREQUENTLY AS PRESCRIBED BY RULE. SUCH UPDATES SHALL BE MADE READILY AVAILABLE TO ANY PROSPECTIVE ADVERTISER IN A MANNER TO BE PRESCRIBED BY THE DEPARTMENT.

3. NO ADVERTISER MAY MAKE OR CAUSE TO BE MADE ANY UNSOLICITED CIRCULAR DELIVERIES TO ANY CONSUMER WHEN THAT CONSUMER'S PERSONAL INFORMATION HAS BEEN POSTED ON THE REGISTRY, ESTABLISHED PURSUANT TO THIS SECTION.

4. A. THE DEPARTMENT SHALL PROVIDE NOTICE TO CONSUMERS OF THE ESTABLISHMENT OF THE REGISTRY. ANY CONSUMER WHO WISHES TO BE INCLUDED ON SUCH REGISTRY SHALL NOTIFY THE SECRETARY OF STATE IN A MANNER TO BE PRESCRIBED BY THE DEPARTMENT.

B. THE DEPARTMENT SHALL PROVIDE NOTICE TO ADVERTISERS OF THE ESTABLISHMENT OF THE REGISTRY, AS WELL AS PROVIDE SUCH ADVERTISER WITH INFORMATION FOR OBTAINING ALL SCHEDULED REGISTRY UPDATES IN A MANNER TO BE PRESCRIBED BY THE DEPARTMENT.

5. ANY PERSON WHO VIOLATES THIS SECTION SHALL: FOR A FIRST VIOLATION THEREOF, BE LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN TWO HUNDRED DOLLARS AND NOT MORE THAN FOUR HUNDRED DOLLARS; FOR A SECOND VIOLATION, BOTH VIOLATIONS WHICH WERE COMMITTED WITHIN A PERIOD OF THIRTY DAYS, BE LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS AND NOT MORE THAN ONE THOUSAND DOLLARS; AND FOR A THIRD OR SUBSEQUENT VIOLATION, ALL VIOLATIONS WHICH WERE COMMITTED WITHIN A PERIOD OF THIRTY DAYS, BE LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS AND NOT MORE THAN TWO THOUSAND DOLLARS.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that 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.