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

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I N A S S E M B L Y

May 7, 2012

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

AN ACT to amend the general business law, in relation to communications by retail stores attempting to settle civil actions deriving from larceny prosecutions

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 349-e to read as follows:

S 349-E. CIVIL PROCEEDINGS IN LARCENY PROSECUTIONS. 1. WHENEVER A MERCHANT OR RETAIL STORE ATTEMPTS TO SETTLE A CIVIL ACTION THAT IS DERIVATIVE OF A CRIMINAL PROSECUTION COMMENCED UNDER ARTICLE ONE HUNDRED FIFTY-FIVE OF THE PENAL LAW, ALL COMMUNICATIONS PERTAINING TO SUCH ATTEMPTED SETTLEMENT SHALL CONTAIN THE FOLLOWING STATEMENT, WHICH SHALL, IF WRITTEN, BE IN A CONSPICUOUS PLACE, IN FONT LARGER THAN THE REMAINDER OF THE COMMUNICATION, AND, IF SPOKEN, READ IN ITS ENTIRETY:

THIS IS AN ATTEMPT TO REACH A SETTLEMENT AGREEMENT IN A CIVIL ACTION FOR SATISFACTION OF DAMAGES RELATED TO A CRIMINAL PROSECUTION. YOU HAVE THE RIGHT TO REFUSE THIS OFFER. YOUR ACCEPTANCE OR REFUSAL OF THIS OFFER HAS NO EFFECT ON ANY CRIMINAL ACTION ARISING FROM THE EVENTS THAT LED TO THIS CIVIL ACTION. FAILURE TO ACCEPT THIS AGREEMENT MAY RESULT IN CIVIL LITIGATION AGAINST YOU.

2. A MERCHANT OR RETAIL STORE THAT FAILS TO INCLUDE SUCH STATEMENT IN ANY COMMUNICATION WITH DEFENDANT SHALL BE STRICTLY LIABLE FOR:

(A) ANY ACTUAL DAMAGES SUSTAINED BY DEFENDANT AS A RESULT OF SUCH FAILURE;

(B) TREBLE THE AMOUNT SOUGHT BY THE MERCHANT OR RETAIL STORE IN ANY SUCH SETTLEMENT AGREEMENT. IN THE CASE OF MULTIPLE SETTLEMENT OFFERS, THE AMOUNT TO BE TREBLED SHALL BE THE HIGHEST SETTLEMENT AMOUNT SOUGHT BY SUCH MERCHANT OR RETAIL STORE;

(C) IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING LIABILITY, THE COSTS OF THE ACTION, TOGETHER WITH A REASONABLE ATTORNEYS' FEE AS DETERMINED BY THE COURT. ON A FINDING BY THE COURT THAT AN ACTION UNDER THIS SECTION WAS BROUGHT IN BAD FAITH AND FOR THE PURPOSE OF HARASSMENT, THE COURT MAY AWARD TO THE DEFENDANT ATTORNEYS' FEES REASONABLE IN RELATION TO THE WORK EXPENDED AND COSTS.

S 2. This act shall take effect immediately.

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

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