

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

10375--A

I N A S S E M B L Y

May 24, 2012

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to the sale of monuments and memorials

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

1 Section 1. Subdivision 2 of section 454 of the general business law,
2 as amended by chapter 390 of the laws of 2007, is amended to read as
3 follows:
4 2. Each sale of a memorial shall only be evidenced by a written
5 contract which shall be signed by all the parties to the contract, which
6 shall be dated, and which shall be completely separate and may not be
7 included in any other contract, agreement, purchase order, price list,
8 itemization of funeral services and merchandise selected or like document
9 reflecting the purchase by a consumer of any other real or personal
10 property or service related to the burial, cremation, or other disposition
11 of the remains of a deceased person. For purposes of this section,
12 the pourer of a foundation shall not be considered the seller of a foundation.
13 Such separate contract shall be prepared, completed and maintained in accordance
14 with this section for every memorial sale, including a foundation therefor,
15 and shall be the only contractual document prepared in connection with such sale.
16 Provided however in the case of the sale of a monument or memorial made at the
17 same time as a preneed sale of funeral goods or services, a one page document
18 summarizing the transaction shall be given to the consumer in addition to,
19 but not in lieu of, the separate contract required by this section. A full and
20 complete copy of such contract shall be given to the consumer by the
21 seller at the time of purchase of such memorial, and shall be retained
22 by the seller for a period of at least three years from the date of sale.
23 Said contract shall contain at least the following:
24 (a) the name, address and telephone number of the seller of the memorial;
25
26

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

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1 (b) the name, address and telephone number of the consumer;
2 (c) the full name of the individual to be memorialized and, if known,
3 the date of such individual's death;
4 (d) a full description of the memorial, including the material to be
5 provided, the dimensions of the finished memorial, a sketch or drawing
6 of the proposed memorial, the wording of any inscription on such memorial
7 including the approximate layout thereof, [and] the method of SAND-
8 BLASTING OR engraving of such inscription, AND A CERTIFICATE OF QUALITY,
9 DETAILING COUNTRY OR STATE OF ORIGIN;
10 (e) the approximate date when the memorial is expected to be
11 completed;
12 (f) the name of the cemetery in which the memorial is to be placed,
13 together with the location of the plot or grave, if known, AND THE NAME
14 OF THE OWNER OF THE PLOT; and
15 (g) a full disclosure of each of the following: the price of the memorial;
16 applicable sales tax, if any; the charge made by the cemetery for
17 the foundation; any charges for additional work, provided that such
18 additional work is clearly described in the contract and such charges
19 are itemized; the total price as contracted; and the schedule for
20 payment, if any.

21 S 2. The general business law is amended by adding a new section 454-a
22 to read as follows:

23 S 454-A. UNSOLICITED OFFERS FOR MONUMENTS OR MEMORIALS. 1. (A) EXCEPT
24 AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IT SHALL BE UNLAWFUL
25 TO PROVIDE ANY OFFER FOR MONUMENTS OR MEMORIALS UNLESS SUCH OFFER HAS
26 FIRST BEEN SOLICITED BY THE INDIVIDUAL TO WHICH IT IS SENT.

27 (B) PROVIDED, HOWEVER, SUCH AN OFFER IS PERMISSIBLE WHERE, IN LARGE,
28 BOLD-FACE TYPE AT THE TOP OF SUCH OFFER, "SOLICITATION" IS CLEARLY
29 PRINTED.

30 2. AN OFFER PROVIDED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF
31 THIS SECTION WHICH OFFERS FOR SALE A SPECIFIC MONUMENT OR MEMORIAL OR
32 CHOICE OF SPECIFIC MONUMENTS OR MEMORIALS SHALL ADDITIONALLY PROVIDE: A
33 FULL DESCRIPTION OF THE MONUMENT OR MEMORIAL, INCLUDING THE MATERIAL TO
34 BE PROVIDED, THE DIMENSIONS OF THE FINISHED MONUMENT OR MEMORIAL, A
35 SKETCH OR DRAWING OF THE PROPOSED MONUMENT OR MEMORIAL, THE METHOD OF
36 SAND BLASTING OR ENGRAVING OF ANY INSCRIPTION, AND A CERTIFICATE OF
37 QUALITY DETAILING COUNTRY OR STATE OF ORIGIN, AS WELL AS A FULL DISCLOSURE
38 OF EACH OF THE FOLLOWING: THE TOTAL PRICE OF THE MONUMENT OR MEMORIAL
39 AS OFFERED; APPLICABLE SALES TAX AS OFFERED, IF ANY; THE CHARGE
40 MADE BY THE CEMETERY FOR THE FOUNDATION IF THE CEMETERY IS KNOWN; ANY
41 CHARGES FOR ADDITIONAL WORK, PROVIDED THAT SUCH ADDITIONAL WORK IS
42 CLEARLY DESCRIBED IN THE OFFER AND SUCH CHARGES ARE ITEMIZED; AND THE
43 SCHEDULE FOR PAYMENT, IF ANY.

44 3. WHENEVER THERE SHALL BE A VIOLATION OF THE PROVISIONS OF THIS
45 SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME
46 OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING
47 JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
48 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE
49 VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR THE
50 JUSTICE THAT THE DEFENDANT HAS VIOLATED THIS SECTION, AN INJUNCTION MAY
51 BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER
52 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT BEEN
53 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE
54 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF
55 SUBDIVISION (A) OF SECTION EIGHT THOUSAND THREE HUNDRED THREE OF THE
56 CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITUTION. IN CONNECTION WITH

1 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO
2 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
3 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. WHENEVER
4 THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED,
5 THE COURT MAY IMPOSE A CIVIL PENALTY OF UP TO FIVE HUNDRED DOLLARS FOR
6 THE FIRST VIOLATION AND UP TO ONE THOUSAND DOLLARS FOR THE SECOND OR
7 SUBSEQUENT VIOLATION WITHIN AN EIGHTEEN MONTH PERIOD.

8 4. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO APPLY TO A
9 SOLICITED OFFER FOR SALE MADE BY ANY FIRM, CORPORATION OR OTHER ENTITY
10 OWNED BY AN INDIVIDUAL LICENSED OR REGISTERED UNDER ARTICLE THIRTY-FOUR
11 OF THE PUBLIC HEALTH LAW AS PART OF A FUNERAL PREARRANGEMENT OR AS PART
12 OF A PRENEED CONTRACT PURSUANT TO SECTION FOUR HUNDRED FIFTY-THREE OF
13 THIS ARTICLE.

14 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CEMETERY CORPO-
15 RATIONS AS DEFINED AND REGULATED BY ARTICLE FIFTEEN OF THE NOT-FOR-PRO-
16 FIT CORPORATION LAW AND THE REGULATIONS PROMULGATED THEREUNDER.

17 S 3. This act shall take effect on the ninetieth day after it shall
18 have become a law.