

2213

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 14, 2011

---

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

AN ACT to amend the general business law, in relation to authorizing the  
attorney general to bring an action for violation of the prohibitions  
concerning unlawful selling practices and specifying damages awardable

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

1     Section 1. Subdivision 3 of section 396 of the general business law,  
2     as amended by chapter 99 of the laws of 1966, is amended to read as  
3     follows:  
4     3. A. Whenever there shall be a violation of this section, an applica-  
5     tion may be made by the attorney general in the name of the people of  
6     the state of New York to a court or justice having jurisdiction to issue  
7     an injunction, and upon notice to the defendant of not less than five  
8     days, to enjoin and restrain the continuance of such violation; and if  
9     it shall appear to the satisfaction of the court or justice that the  
10    defendant is, in fact, violating this section, an injunction may be  
11    issued by such court or justice, enjoining and restraining such action  
12    or violation, without requiring proof that any person has, in fact, been  
13    misled or deceived or otherwise damaged thereby.  
14    B. IN ADDITION TO THE AUTHORITY GRANTED TO THE ATTORNEY GENERAL PURSU-  
15    ANT TO PARAGRAPH A OF THIS SUBDIVISION AND THE AUTHORITY GRANTED TO A  
16    RECIPIENT PURSUANT TO PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION,  
17    THE ATTORNEY GENERAL, OR ANY PERSON ADVERSELY AFFECTED BY REASON OF A  
18    VIOLATION OF THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, MAY  
19    BRING AN ACTION AGAINST A PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVI-  
20    SION TWO OF THIS SECTION TO RECOVER THE GREATER OF:  
21    (1) ACTUAL DAMAGES; OR  
22    (2) UP TO FIVE HUNDRED DOLLARS FOR EACH INSTANCE IN WHICH GOODS, WARES  
23    OR MERCHANDISE WERE SENT IN VIOLATION OF THE PROVISIONS OF SUBDIVISION  
24    TWO OF THIS SECTION.

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

LBD00814-01-1

1 C. IN AN ACTION UNDER PARAGRAPH B OF THIS SUBDIVISION THE COURT MAY  
2 AWARD THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEY'S FEES  
3 TO A PREVAILING PLAINTIFF.

4 D. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT RIGHTS OR REMEDIES  
5 WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY GENERAL OR ANY  
6 OTHER PERSON AUTHORIZED TO BRING AN ACTION UNDER THIS SECTION.

7 S 2. This act shall take effect immediately and shall apply to all  
8 selling practices pertaining to unordered goods.