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

8263

2011-2012 Regular Sessions

I N A S S E M B L Y

June 9, 2011

Introduced by M. of A. STEVENSON -- Multi-Sponsored by -- M. of A. CALHOUN, CERETTO, COOK, SAYWARD, SPANO -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting unsolicited 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 349-f to read as follows:

S 394-F. UNSOLICITED ADVERTISEMENTS. 1. FOR PURPOSES OF THIS SECTION THE TERMS:

(A) "UNSOLICITED ADVERTISEMENT" SHALL MEAN ANY WRITTEN SOLICITATION FOR THE PURCHASE, LEASE, CONTRACT OR INVESTMENT IN PROPERTY, GOODS OR SERVICES, INCLUDING CIRCULARS, NOTIFICATIONS OF ITEMS FOR SALE, AND THE OFFERING OF A PRIZE IN EXCHANGE FOR A PURCHASE OR FOR ATTENDANCE AT ANY LOCATION FOR PURPOSES OF A SOLICITATION, OR CONTRIBUTION TO ANY NATURAL PERSON WITHOUT THAT NATURAL PERSON'S EXPRESS INVITATION OR PERMISSION.

(B) "CONSUMER" SHALL MEAN A NATURAL PERSON WHO IS SOLICITED TO PURCHASE, RENT OR INVEST IN PROPERTY, GOODS OR SERVICES INCLUDING RECEIVING A PRIZE IN EXCHANGE FOR A PURCHASE OR ATTENDANCE.

2. NO PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION, SHALL MAIL OR DELIVER BY ANY MEANS, ANY UNSOLICITED ADVERTISEMENT TO THE HOME, OFFICE OR BUSINESS ADDRESS OF ANY CONSUMER, INCLUDING ADVERTISEMENTS GENERICALLY ADDRESSED TO "OCCUPANTS" OR "RESIDENTS" OF SUCH ADDRESS UNLESS SUCH ADVERTISEMENT HAS BEEN AUTHORIZED OR REQUESTED BY SUCH CONSUMER.

3. NO PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION, IF SUCH PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED

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

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FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

4. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THE PROVISIONS OF THIS SECTION HAS OCCURRED, THE COURT SHALL IMPOSE A CIVIL PENALTY OF TEN THOUSAND DOLLARS FOR THE FIRST OFFENSE, AND THE FINE SHALL INCREASE BY AN ADDITIONAL TEN THOUSAND DOLLARS FOR EACH SUBSEQUENT OFFENSE COMMITTED THEREAFTER.

5. ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE OR AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES, IF THE COURT FINDS THE DEFENDANT HAS REPEATEDLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. If any provision of this act or the application of such provision in certain circumstances shall be held invalid, the validity of the remainder of this act and its applicability to other circumstances shall not be affected.

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