

8376

2011-2012 Regular Sessions

I N   A S S E M B L Y

June 15, 2011

---

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

AN ACT to amend the general business law, in relation to the identity theft protection services

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

1     Section 1. Section 393-b of the general business law, as added by  
2 chapter 433 of the laws of 2005, is amended to read as follows:  
3     S 393-b. [Written solicitation] CREDIT CARD PROTECTION SERVICES. 1.  
4 [Any written] FOR THE PURPOSES OF THIS SECTION:  
5     (A) "CLEARLY AND PROMINENTLY" MEANS: (I) IN WRITTEN COMMUNICATIONS,  
6 INCLUDING PRINT AND THOSE MADE THROUGH AN ELECTRONIC MEDIUM (SUCH AS  
7 VIDEO AND INTERACTIVE MEDIA INCLUDING, BUT NOT LIMITED TO, THE INTERNET,  
8 ONLINE SERVICES, AND ELECTRONIC MAIL) THE MESSAGE SHALL BE IN A TYPE  
9 SIZE SUFFICIENTLY NOTICEABLE FOR AN ORDINARY CONSUMER TO READ AND  
10 COMPREHEND IT, IN TYPE THAT CONTRASTS WITH THE BACKGROUND AGAINST WHICH  
11 IT APPEARS; AND (II) IN ORAL COMMUNICATIONS, THE MESSAGE SHALL BE DELIV-  
12 ERED IN A VOLUME AND CADENCE SUFFICIENT FOR AN ORDINARY CONSUMER TO HEAR  
13 IT AND COMPREHEND IT. IF ANY COMMUNICATION IS PRESENTED SOLELY THROUGH  
14 ORAL, WRITTEN, OR VISUAL MEANS, THE MESSAGE SHALL BE MADE THROUGH THE  
15 SAME MEANS. REGARDLESS OF THE MEDIUM USED TO DISSEMINATE IT, THE MESSAGE  
16 SHALL BE IN UNDERSTANDABLE LANGUAGE AND SYNTAX. NOTHING CONTRARY TO,  
17 INCONSISTENT WITH, OR IN MITIGATION OF THE MESSAGE SHALL BE USED IN ANY  
18 COMMUNICATION.  
19     (B) "CREDIT CARD PROTECTION SERVICE" MEANS A SERVICE TO PROTECT,  
20 INDEMNIFY, OR REIMBURSE THE CREDIT CARD HOLDER AGAINST THE LOSS OR  
21 MISUSE OF THE CREDIT CARD. SUCH TERM SHALL INCLUDE, BUT NOT BE LIMITED  
22 TO, SERVICES THAT OFFER TO OBTAIN ACCESS TO CREDIT REPORTS, PROVIDE AN  
23 EXPLANATION OF CREDIT ENTRIES ON THE REPORT, IDENTIFY THOSE ENTITIES  
24 THAT HAVE ACCESSED THE REPORT, AND PROVIDE CREDIT CARD PROTECTION SEC-  
25 URITY SERVICES.

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

LBD08991-02-1

1 2. IN ANY solicitation to enter into an agreement for various credit  
2 card protection services THE ENTITY OFFERING SUCH SERVICES shall CLEARLY  
3 AND PROMINENTLY:

4 (A) disclose that the purchase of credit card protection services or  
5 the renewal thereof is not required for a consumer to secure or retain  
6 his or her credit card; and

7 (B) BY MEANS OF a concise statement [regarding] INFORM THE CONSUMER OF  
8 his or her rights that already exist free of charge under the "Fair  
9 Credit Billing Act" and the regulations thereunder, as such acts and  
10 regulations may from time to time be amended. [A credit card protection  
11 service means a service to protect, indemnify, or reimburse the credit  
12 card holder against the loss or misuse of the credit card. Such term  
13 shall include services provided along with credit card protection  
14 services for the same price, including, but not be limited to, access to  
15 credit reports, an explanation of credit entries on the report, the  
16 identification of those who have accessed the report, and insurance and  
17 security services.] No agreement for CREDIT CARD PROTECTION services  
18 shall provide that services will be automatically renewed on an annual  
19 basis and the consumer billed, unless the consumer in the expiring  
20 agreement is notified not more than sixty days and not less than fifteen  
21 days prior to the termination of the existing agreement by mail of the  
22 credit protection service provider's intention to automatically renew  
23 the agreement.

24 [2.] 3. Whenever there shall be a violation of this section, applica-  
25 tion may be made by the attorney general in the name of the people of  
26 the state of New York to a court or justice having jurisdiction by a  
27 special proceeding to issue an injunction, and upon notice to the  
28 defendant of not less than five days, to enjoin and restrain the contin-  
29 uance of such violations; and if it shall appear to the satisfaction of  
30 the court or justice that the defendant has, in fact, violated this  
31 section, an injunction may be issued by such court or justice, enjoining  
32 and restraining any further violation, without requiring proof that any  
33 person has, in fact, been injured or damaged thereby. In any such  
34 proceeding, the court may make allowances to the attorney general as  
35 provided in paragraph six of subdivision (a) of section eighty-three  
36 hundred three of the civil practice law and rules, and direct restitu-  
37 tion. Whenever the court shall determine that a violation of this  
38 section has occurred, the court may impose a civil penalty of not more  
39 than one thousand dollars for each violation. In connection with any  
40 such proposed application, the attorney general is authorized to take  
41 proof and make a determination of the relevant facts and to issue  
42 subpoenas in accordance with the civil practice law and rules.

43 S 2. The general business law is amended by adding a new section 393-  
44 bb to read as follows:

45 S 393-BB. IDENTITY THEFT PROTECTION SERVICES. 1. FOR THE PURPOSES OF  
46 THIS SECTION:

47 (A) "CLEARLY AND PROMINENTLY" MEANS: (I) IN WRITTEN COMMUNICATIONS,  
48 INCLUDING PRINT AND THOSE MADE THROUGH AN ELECTRONIC MEDIUM (SUCH AS  
49 VIDEO AND INTERACTIVE MEDIA INCLUDING, BUT NOT LIMITED TO, THE INTERNET,  
50 ONLINE SERVICES, AND ELECTRONIC MAIL) THE MESSAGE SHALL BE IN A TYPE  
51 SIZE SUFFICIENTLY NOTICEABLE FOR AN ORDINARY CONSUMER TO READ AND  
52 COMPREHEND IT, IN TYPE THAT CONTRASTS WITH THE BACKGROUND AGAINST WHICH  
53 IT APPEARS; AND (II) IN ORAL COMMUNICATIONS, THE MESSAGE SHALL BE DELIV-  
54 ERED IN A VOLUME AND CADENCE SUFFICIENT FOR AN ORDINARY CONSUMER TO HEAR  
55 IT AND COMPREHEND IT. IF ANY COMMUNICATION IS PRESENTED SOLELY THROUGH  
56 ORAL, WRITTEN, OR VISUAL MEANS, THE MESSAGE SHALL BE MADE THROUGH THE

1 SAME MEANS. REGARDLESS OF THE MEDIUM USED TO DISSEMINATE IT, THE MESSAGE  
2 SHALL BE IN UNDERSTANDABLE LANGUAGE AND SYNTAX. NOTHING CONTRARY TO,  
3 INCONSISTENT WITH, OR IN MITIGATION OF THE MESSAGE SHALL BE USED IN ANY  
4 COMMUNICATION.

5 (B) "IDENTITY THEFT PROTECTION SERVICE" MEANS A SERVICE MARKETING,  
6 DESCRIBED AND SOLD AS A SERVICE TO PROTECT A CONSUMER FROM IDENTITY  
7 THEFT. SUCH TERM SHALL INCLUDE, BUT NOT BE LIMITED TO, SERVICES THAT:

8 (I) NOTIFY CONSUMERS WHEN NEW CREDIT IS OPENED IN HIS OR HER NAME;

9 (II) MONITOR THE CONSUMER'S CREDIT REPORT FOR ANY CHANGES THAT MAY  
10 INDICATE FRAUDULENT ACTIVITY AND NOTIFY THE CONSUMER OF SUCH ACTIVITY;

11 (III) PROVIDE THE IDENTIFICATION OF THOSE WHO HAVE OBTAINED ACCESS TO  
12 THE CONSUMER'S CREDIT REPORT;

13 (IV) PLACE, RENEW, OR UPDATE FRAUD ALERTS OR SECURITY FREEZES; OR

14 (V) ASSIST CONSUMERS BY OBTAINING A LIMITED POWER OF ATTORNEY FROM THE  
15 CONSUMER. SUCH TERM SHALL NOT INCLUDE IDENTITY THEFT GROUP INSURANCE  
16 POLICIES ISSUED PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED  
17 FIFTY-ONE OF THE INSURANCE LAW.

18 2. (A) IN ANY SOLICITATION TO ENTER INTO AN AGREEMENT FOR IDENTITY  
19 THEFT PROTECTION SERVICES THE ENTITY OFFERING SUCH SERVICES SHALL CLEAR-  
20 LY AND PROMINENTLY, BY MEANS OF A CONCISE STATEMENT, INFORM THE CONSUMER  
21 OF HIS OR HER RIGHTS THAT ALREADY EXIST FREE OF CHARGE UNDER THE FEDERAL  
22 FAIR CREDIT REPORTING ACT AND THE REGULATIONS THEREUNDER AND ARTICLE  
23 TWENTY-FIVE OF THIS CHAPTER, AS SUCH ACTS AND REGULATIONS MAY FROM TIME  
24 TO TIME BE AMENDED.

25 (B) NO AGREEMENT FOR IDENTITY THEFT PROTECTION SERVICES SHALL PROVIDE  
26 THAT SERVICES WILL BE AUTOMATICALLY RENEWED ON AN ANNUAL BASIS AND THE  
27 CONSUMER BILLED, UNLESS THE CONSUMER IN THE EXPIRING AGREEMENT IS NOTI-  
28 FIED NOT MORE THAN SIXTY DAYS AND NOT LESS THAN FIFTEEN DAYS PRIOR TO  
29 THE TERMINATION OF THE EXISTING AGREEMENT BY MAIL OF THE IDENTITY THEFT  
30 PROTECTION SERVICE PROVIDER'S INTENTION TO AUTOMATICALLY RENEW THE  
31 AGREEMENT.

32 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, APPLICATION  
33 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE  
34 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL  
35 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF  
36 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH  
37 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR  
38 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN  
39 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND  
40 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY  
41 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH  
42 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS  
43 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE  
44 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-  
45 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS  
46 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE  
47 THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY  
48 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE  
49 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE  
50 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

51 S 3. This act shall take effect on the ninetieth day after it shall  
52 have become a law; provided, however that effective immediately, the  
53 addition, amendment and/or repeal of any rule or regulation necessary  
54 for the implementation of this act on its effective date are authorized  
55 and directed to be made and completed on or before such effective date.