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

1787--C

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. MILLMAN, BRINDISI, RAIA, ROBERTS, BROOK-KRASNY, JACOBS -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, DenDEKKER, MAGEE, PERRY, ROBINSON -- read once and referred to the Committee on Aging -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading -- committed to the Committee on Aging -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the general business law, in relation to requiring disclosures in advertisements using a senior specific designation

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 350-b-1 to read as follows:

S 350-B-1. DISCLOSURES REQUIRED IN ADVERTISEMENTS USING A SENIOR SPECIFIC DESIGNATION. 1. FOR PURPOSES OF THIS SECTION, "SENIOR SPECIFIC DESIGNATION" SHALL MEAN A TITLE, PROFESSIONAL DESIGNATION, CREDENTIAL, CERTIFICATION, OR PROFESSIONAL DESCRIPTION THAT INDICATES THE PERSON HAS EXPERTISE OR TRAINING IN ISSUES SPECIFICALLY RELATED TO SENIORS IN THEIR FIELD.

2. (A) ANY PERSON OR BUSINESS WHO USES A SENIOR SPECIFIC DESIGNATION IN MAKING REPRESENTATIONS FOR THE PURPOSE OF INDUCING, OR WHICH ARE LIKELY TO INDUCE, DIRECTLY OR INDIRECTLY, THE PURCHASE OF THE INDIVIDUAL'S SERVICES SHALL CLEARLY AND PROMINENTLY DISCLOSE, IN ANY ADVERTISEMENT AND IN WRITING TO ANY PROSPECTIVE CLIENT AT THE INITIAL MEETING OR CONSULTATION WITH SUCH PROSPECTIVE CLIENT, THE BASIS OR SOURCE OF SUCH SENIOR SPECIFIC DESIGNATION, INCLUDING WHETHER THE SENIOR SPECIFIC

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

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DESIGNATION WAS CREATED BY THE PERSON OR BUSINESS USING IT. FOR THE PURPOSES OF THIS SECTION, "CLEARLY AND PROMINENTLY" MEANS:

(1) IN WRITTEN COMMUNICATIONS, INCLUDING PRINT AND THOSE MADE THROUGH AN ELECTRONIC MEDIUM, THE MESSAGE SHALL BE IN A TYPE SIZE SUFFICIENTLY NOTICEABLE FOR AN ORDINARY CONSUMER TO READ AND COMPREHEND IT, IN TYPE THAT CONTRASTS WITH THE BACKGROUND AGAINST WHICH IT APPEARS; AND

(2) IN ORAL COMMUNICATIONS, THE MESSAGE SHALL BE DELIVERED IN A VOLUME SUFFICIENT FOR AN ORDINARY CONSUMER TO HEAR IT AND COMPREHEND IT. SUCH MESSAGE SHALL BE IN UNDERSTANDABLE LANGUAGE AND SYNTAX REGARDLESS OF HOW THE MESSAGE IS DISSEMINATED.

(B) IF ANY COMMUNICATION IS PRESENTED SOLELY THROUGH ORAL, WRITTEN, OR VISUAL MEANS, THE MESSAGE DISSEMINATED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE MADE THROUGH THE SAME MEANS.

(C) THE REQUIREMENTS OF THIS SUBDIVISION SUPPLEMENT, AND SHALL NOT BE CONSTRUED TO LIMIT, THE OBLIGATIONS OF ANY PROFESSIONAL REGISTERED OR LICENSED PURSUANT TO ANY OTHER SECTION OF LAW AND REGULATIONS THEREUNDER, NOR SHALL THEY BE CONSTRUED TO AUTHORIZE THE PRACTICE OF ANY LICENSED PROFESSION NOR THE OFFER OF PROFESSIONAL SERVICES BY ANY UNLICENSED PERSON.

3. IN ADDITION TO ANY CIVIL PENALTY AVAILABLE UNDER SECTION THREE HUNDRED FIFTY-D OF THIS ARTICLE, WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION.

S 2. This act shall take effect immediately.