

7254

I N S E N A T E

May 8, 2014

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

1 Section 1. The general business law is amended by adding a new section
2 350-b-1 to read as follows:

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

9 2. (A) ANY PERSON OR BUSINESS WHO USES A SENIOR SPECIFIC DESIGNATION
10 IN MAKING REPRESENTATIONS FOR THE PURPOSE OF INDUCING, OR WHICH ARE
11 LIKELY TO INDUCE, DIRECTLY OR INDIRECTLY, THE PURCHASE OF THE INDIVID-
12 UAL'S SERVICES SHALL CLEARLY AND PROMINENTLY DISCLOSE, IN ANY ADVERTISE-
13 MENT AND IN WRITING TO ANY PROSPECTIVE CLIENT AT THE INITIAL MEETING OR
14 CONSULTATION WITH SUCH PROSPECTIVE CLIENT, THE BASIS OR SOURCE OF SUCH
15 SENIOR SPECIFIC DESIGNATION, INCLUDING WHETHER THE SENIOR SPECIFIC
16 DESIGNATION WAS CREATED BY THE PERSON OR BUSINESS USING IT. FOR THE
17 PURPOSES OF THIS SECTION, "CLEARLY AND PROMINENTLY" MEANS:

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

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

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

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

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1 (C) NO PERSON OR BUSINESS SHALL MAKE ANY COMMUNICATION THAT MITIGATES
2 ANY MESSAGE DISSEMINATED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION
3 OR THAT IS CONTRARY TO OR INCONSISTENT WITH SUCH MESSAGE. THE REQUIRE-
4 MENTS OF THIS SUBDIVISION SUPPLEMENT, AND SHALL NOT BE CONSTRUED TO
5 LIMIT, THE OBLIGATIONS OF ANY PROFESSIONAL REGISTERED OR LICENSED PURSU-
6 ANT TO ANY OTHER SECTION OF LAW AND REGULATIONS THEREUNDER, NOR SHALL
7 THEY BE CONSTRUED TO AUTHORIZE THE PRACTICE OF ANY LICENSED PROFESSION
8 NOR THE OFFER OF PROFESSIONAL SERVICES BY ANY UNLICENSED PERSON.

9 3. IN ADDITION TO ANY CIVIL PENALTY AVAILABLE UNDER SECTION THREE
10 HUNDRED FIFTY-D OF THIS ARTICLE, WHENEVER THERE SHALL BE A VIOLATION OF
11 THIS SECTION, AN APPLICATION MAY BE MADE TO A COURT OR JUSTICE HAVING
12 JURISDICTION TO ISSUE AN INJUNCTION, UPON NOTICE TO THE DEFENDANT OF NOT
13 LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN SUCH VIOLATION. IF IT SHALL
14 APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT IS
15 ASSUMING, ADOPTING OR USING SUCH SENIOR SPECIFIC DESIGNATION IN
16 VIOLATION OF THIS SECTION AN INJUNCTION MAY BE ISSUED BY SAID COURT OR
17 JUSTICE ENJOINING AND RESTRAINING SUCH VIOLATION WITHOUT REQUIRING PROOF
18 THAT ANY PERSON HAS IN FACT BEEN DECEIVED OR MISLED THEREBY.

19 S 2. This act shall take effect immediately.