

309--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to the sale of monuments and memorials

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

1 Section 1. Subdivision 2 of section 454 of the general business law,
2 as amended by chapter 390 of the laws of 2007, is amended to read as
3 follows:
4 2. Each sale of a memorial shall only be evidenced by a written
5 contract which shall be signed by all the parties to the contract, which
6 shall be dated, and which shall be completely separate and may not be
7 included in any other contract, agreement, purchase order, price list,
8 itemization of funeral services and merchandise selected or like document
9 reflecting the purchase by a consumer of any other real or personal
10 property or service related to the burial, cremation, or other disposition
11 of the remains of a deceased person. For purposes of this section,
12 the pourer of a foundation shall not be considered the seller of a foundation.
13 Such separate contract shall be prepared, completed and maintained in accordance
14 with this section for every memorial sale, including a foundation therefor,
15 and shall be the only contractual document prepared in connection with such sale.
16 Provided however in the case of the sale of a monument or memorial made at the same time
17 as a preneed sale of funeral goods or services, a one page document summarizing the
18 transaction shall be given to the consumer in addition to, but not in lieu of,
19 the separate contract required by this section. A full and complete copy of such contract
20 shall be given to the consumer by the seller at the time of purchase of such memorial,
21 and shall be retained by the seller for a period of at least three years from the date of sale.
22 Said contract shall contain at least the following:

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

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1 (a) the name, address and telephone number of the seller of the memo-
2 rial;

3 (b) the name, address and telephone number of the consumer;

4 (c) the full name of the individual to be memorialized and, if known,
5 the date of such individual's death;

6 (d) a full description of the memorial, including the material to be
7 provided, the dimensions of the finished memorial, a sketch or drawing
8 of the proposed memorial, the wording of any inscription on such memori-
9 al including the approximate layout thereof, [and] the method of engrav-
10 ing of such inscription AND THE COUNTRY OR STATE OF ORIGIN OF SUCH MONU-
11 MENT OR MEMORIAL PROVIDED BY THE MANUFACTURER;

12 (e) the approximate date when the memorial is expected to be
13 completed;

14 (f) the name of the cemetery in which the memorial is to be placed,
15 together with the location of the plot or grave, if known; and

16 (g) a full disclosure of each of the following: the price of the memo-
17 rial; applicable sales tax, if any; the charge made by the cemetery for
18 the foundation; any charges for additional work, provided that such
19 additional work is clearly described in the contract and such charges
20 are itemized; the total price as contracted; and the schedule for
21 payment, if any.

22 S 2. The general business law is amended by adding a new section 454-a
23 to read as follows:

24 S 454-A. UNSOLICITED OFFERS FOR MONUMENTS OR MEMORIALS. 1. (A) EXCEPT
25 AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IT SHALL BE UNLAWFUL
26 TO PROVIDE ANY OFFER FOR MONUMENTS OR MEMORIALS BY MAIL UNLESS SUCH
27 OFFER HAS FIRST BEEN SOLICITED BY THE INDIVIDUAL TO WHICH IT IS SENT.

28 (B) PROVIDED, HOWEVER, SUCH AN OFFER IS PERMISSIBLE WHERE, IN LARGE,
29 BOLD-FACE TYPE AT THE TOP OF SUCH OFFER, "SOLICITATION" IS CLEARLY
30 PRINTED.

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

51 3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CEMETERY CORPO-
52 RATIONS AS DEFINED AND REGULATED BY ARTICLE FIFTEEN OF THE NOT-FOR-PRO-
53 FIT CORPORATION LAW AND THE REGULATIONS PROMULGATED THEREUNDER.

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