

3833

2013-2014 Regular Sessions

I N S E N A T E

February 21, 2013

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the general business law, in relation to telephone directory reduction and recycling

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

1 Section 1. Article 27 of the environmental conservation law is amended
2 by adding a new title 29 to read as follows:

3 TITLE 29

4 TELEPHONE DIRECTORY REDUCTION AND RECYCLING

5 SECTION 27-2901. DEFINITIONS.

6 27-2903. DISTRIBUTOR RESPONSIBILITIES

7 S 27-2901. DEFINITIONS. AS USED IN THIS TITLE:

8 1. "DISTRIBUTOR" MEANS ANY PERSON OR ENTITY ENGAGED IN THE DISTRIB-
9 UTION OF TELEPHONE DIRECTORIES TO THE GENERAL PUBLIC.

10 2. "TELEPHONE DIRECTORY" MEANS A PRINTED PUBLICATION LISTING:

11 A. THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF BUSINESSES BY TYPE,
12 AND CONTAINING ADVERTISEMENTS PROMOTING THOSE BUSINESSES OR THE PRODUCTS
13 THEY SELL; AND/OR

14 B. THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF INDIVIDUALS, BUSI-
15 NESSES AND GOVERNMENT LISTINGS IN ALPHABETICAL ORDER.

16 S 27-2903. DISTRIBUTOR RESPONSIBILITIES.

17 1. EVERY DISTRIBUTOR SHALL ENSURE THAT EACH TELEPHONE DIRECTORY
18 PROVIDED TO THE GENERAL PUBLIC SHALL:

19 A. TO THE MAXIMUM EXTENT PRACTICABLE BE PRINTED ON PAPER THAT IS
20 RECYCLABLE AND CONTAINS NOT LESS THAN THIRTY PERCENT POST-CONSUMER RECY-
21 CLED FIBER;

22 B. TO THE MAXIMUM EXTENT PRACTICABLE BE PRINTED WITH INKS THAT CONTAIN
23 NO HEAVY METALS OR OTHER TOXIC MATERIALS;

24 C. BE BOUND WITH MATERIALS THAT POSE NO UNREASONABLE BARRIERS TO RECY-
25 CLING THE TELEPHONE DIRECTORY;

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

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1 D. INCLUDE A CONSPICUOUS NOTICE WHICH SHALL BE CONSISTENT WITH ANY
2 GUIDELINES OF THE DEPARTMENT THAT PROVIDES INFORMATION ON THE APPROPRI-
3 ATE MEANS OF RECYCLING DISCARDED TELEPHONE DIRECTORIES;

4 E. INCLUDE A CONSPICUOUS NOTICE, IN ACCORDANCE WITH THE PROVISIONS OF
5 SECTION THREE HUNDRED THIRTY-SIX OF THE GENERAL BUSINESS LAW, THAT INDI-
6 CATES HOW A CONSUMER MAY DECLINE TO RECEIVE FUTURE DIRECTORIES.

7 S 2. Section 336 of the general business law is amended by adding a
8 new subdivision 4 to read as follows:

9 4. (A) EVERY TELEPHONE DIRECTORY HEREAFTER DISTRIBUTED TO THE MEMBERS
10 OF THE GENERAL PUBLIC IN THIS STATE OR IN ANY PORTION THEREOF WHICH
11 LISTS THE CALLING NUMBERS OF TELEPHONES OF ANY TELEPHONE EXCHANGE
12 LOCATED IN THIS STATE SHALL CONTAIN A CONSPICUOUS NOTICE PROVIDING
13 INFORMATION IN CLEAR, CONCISE LANGUAGE THAT THE CONSUMER MAY "OPT-OUT"
14 BY DECLINING RECEIPT OF FUTURE PRINT DIRECTORIES. SUCH NOTICE SHALL
15 ALSO INCLUDE THE TOLL-FREE TELEPHONE NUMBER AND INTERNET WEB SITE
16 ADDRESS THAT AN INDIVIDUAL MAY USE TO DECLINE RECEIPT OF FUTURE PRINT
17 DIRECTORIES. IN ADDITION, THE DISTRIBUTOR MAY INCLUDE A PREPAID POSTCARD
18 WITH THE DIRECTORY THAT MAY BE USED TO DECLINE RECEIPT OF FUTURE PRINT
19 DIRECTORIES.

20 (B) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO THE DISTRIB-
21 UTION OF RESIDENTIAL WHITE PAGE DIRECTORIES BY A TELEPHONE CORPORATION
22 PROVIDING LOCAL EXCHANGE SERVICE IN THIS STATE THAT, PURSUANT TO A WAIV-
23 ER FROM THE PUBLIC SERVICE COMMISSION OF ITS RULES REGARDING DISTRIB-
24 UTION OF SUCH DIRECTORIES, IS AUTHORIZED TO DISCONTINUE DISTRIBUTION OF
25 PRINTED DIRECTORIES TO CUSTOMERS WHO HAVE NOT "OPTED-IN" BY INDICATING A
26 PREFERENCE TO RECEIVE SUCH PRINTED DIRECTORIES, PROVIDED THAT THE WAIVER
27 INCLUDES SUCH CONDITIONS AS THE COMMISSION DEEMS APPROPRIATE TO ENSURE
28 THE PROVISION OF NOTIFICATION THAT REACHES ALL CUSTOMERS OF THEIR OPTION
29 TO RECEIVE DELIVERY OF SUCH DIRECTORIES.

30 S 3. The general business law is amended by adding a new section 336-
31 aa to read as follows:

32 S 336-AA. RESPONSIBILITIES OF DISTRIBUTORS OF TELEPHONE DIRECTORIES.
33 1. UPON NOTIFICATION THAT DELIVERY OF A PRINT TELEPHONE DIRECTORY HAS
34 BEEN DECLINED AS PROVIDED IN SECTION THREE HUNDRED THIRTY-SIX OF THIS
35 ARTICLE, THE DISTRIBUTOR SHALL DISCONTINUE DIRECTORY DELIVERY TO THE
36 DECLINING CONSUMER. A DISTRIBUTOR MAY COMPLY WITH THIS SUBDIVISION BY
37 REDUCING THE NUMBER OF DIRECTORIES DELIVERED TO A MULTIPLE DWELLING BY
38 THE NUMBER OF OCCUPANTS DECLINING SUCH DELIVERY.

39 2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,
40 A DISTRIBUTOR MAY RESUME DIRECTORY DELIVERY TO AN INDIVIDUAL WHO HAS
41 PREVIOUSLY DECLINED DELIVERY, PROVIDED THAT SUCH INDIVIDUAL REQUESTS
42 RESUMPTION OF DELIVERY BY USE OF THE DISTRIBUTOR'S TOLL-FREE TELEPHONE
43 NUMBER OR INTERNET WEB SITE ADDRESS OR BY OTHER WRITTEN REQUEST.

44 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION OR OF SUBDIVI-
45 SION FOUR OF SECTION THREE HUNDRED THIRTY-SIX OF THIS ARTICLE, AN APPLI-
46 CATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF
47 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE
48 AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE
49 DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF
50 IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE
51 DEFENDANT HAS IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE
52 ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER
53 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN
54 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING THE COURT MAY MAKE
55 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN SECTION EIGHTY-THREE
56 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-

1 TION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY
2 GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE
3 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-
4 TICE LAW AND RULES. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION
5 OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF
6 NOT MORE THAN ONE HUNDRED DOLLARS FOR A SINGLE VIOLATION AND NOT MORE
7 THAN FIVE THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A
8 SINGLE ACT OR INCIDENT. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR
9 CORPORATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS
10 SECTION IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION
11 SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT
12 INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE
13 MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

14 S 4. This act shall take effect one year after it shall have become a
15 law. Effective immediately, the addition, amendment and/or repeal of any
16 rule or regulation necessary for the implementation of this act on its
17 effective date are authorized and directed to be made and completed on
18 or before such effective date.