

7254--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

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

4 (C) THE REQUIREMENTS OF THIS SUBDIVISION SUPPLEMENT, AND SHALL NOT BE
5 CONSTRUED TO LIMIT, THE OBLIGATIONS OF ANY PROFESSIONAL REGISTERED OR
6 LICENSED PURSUANT TO ANY OTHER SECTION OF LAW AND REGULATIONS THERE-
7 UNDER, NOR SHALL THEY BE CONSTRUED TO AUTHORIZE THE PRACTICE OF ANY
8 LICENSED PROFESSION NOR THE OFFER OF PROFESSIONAL SERVICES BY ANY UNLI-
9 CENSED PERSON.

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

28 S 2. This act shall take effect immediately.