

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

402--A

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. DINOWITZ, LENTOL, LAVINE, ROBERTS, MOSLEY, GRAF
-- 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 communications
by mercantile establishments attempting to settle civil actions deriv-
ing from larceny prosecutions

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

1 Section 1. The general business law is amended by adding a new section
2 349-f to read as follows:
3 S 349-F. CIVIL PROCEEDINGS DERIVATIVE OF ALLEGED LARCENY. 1. WHENEVER
4 A MERCANTILE ESTABLISHMENT ATTEMPTS TO SETTLE A CIVIL ACTION PURSUANT TO
5 SECTION 11-105 OF THE GENERAL OBLIGATIONS LAW, ALL COMMUNICATIONS
6 PERTAINING TO SUCH ATTEMPTED SETTLEMENT SHALL CONTAIN THE FOLLOWING
7 STATEMENT, WHICH SHALL, IF WRITTEN, BE IN A CONSPICUOUS PLACE, IN FONT
8 LARGER THAN THE REMAINDER OF THE COMMUNICATION, AND, IF SPOKEN, READ IN
9 ITS ENTIRETY:
10 THIS IS AN ATTEMPT TO REACH A CIVIL SETTLEMENT AGREEMENT RESULTING
11 FROM A LARCENY THAT ALLEGEDLY INVOLVES YOU. SHOULD YOU CHOOSE TO AGREE
12 TO THIS SETTLEMENT, YOU WILL BE SUBJECT TO THE TERMS AND CONDITIONS OF
13 SUCH AGREEMENT, WHICH ARE GOVERNED BY S11-105 OF NEW YORK STATE'S GENER-
14 AL OBLIGATIONS LAW.
15 SHOULD YOU REFUSE THIS AGREEMENT, YOU ARE STILL SUBJECT TO S11-105 OF
16 NEW YORK STATE'S GENERAL OBLIGATIONS LAW, WHICH INDICATES THAT PERSONS
17 WHO COMMIT LARCENY AGAINST THE PROPERTY OF A MERCANTILE ESTABLISHMENT
18 ARE CIVILLY LIABLE TO SUCH MERCANTILE ESTABLISHMENT IN THE AMOUNT OF THE
19 RETAIL PRICE OF THE MERCHANDISE (ONLY IF SUCH MERCHANDISE IS NOT RECOV-
20 ERED IN SALEABLE CONDITION), UP TO \$1,500, AND A PENALTY IN THE AMOUNT
21 THAT IS THE GREATER OF \$75 OR FIVE-TIMES THE RETAIL PRICE, UP TO \$500.

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

LBD02283-02-5

1 THE MERCANTILE ESTABLISHMENT MAY FILE A CIVIL LAWSUIT AGAINST YOU TO
2 PURSUE THE RECOVERY OF THESE DAMAGES. THESE CIVIL PENALTIES PRESCRIBED
3 BY LAW ARE ENTIRELY SEPARATE FROM ANY CRIMINAL PENALTIES THAT MAY BE
4 BROUGHT AGAINST YOU.

5 SHOULD YOU ACCEPT OR REFUSE A CIVIL SETTLEMENT AGREEMENT, A MERCANTILE
6 ESTABLISHMENT MAY STILL BRING CRIMINAL CHARGES AGAINST YOU IN A COURT OF
7 LAW, UNLESS SUCH CIVIL SETTLEMENT AGREEMENT BETWEEN YOU AND THE MERCAN-
8 TILE ESTABLISHMENT PRECLUDES THE MERCANTILE ESTABLISHMENT FROM PURSUING
9 CRIMINAL CHARGES.

10 2. A MERCANTILE ESTABLISHMENT THAT VIOLATES THIS SECTION SHALL BE
11 STRICTLY LIABLE FOR:

12 (A) ANY ACTUAL DAMAGES SUSTAINED BY DEFENDANT AS A RESULT OF SUCH
13 FAILURE;

14 (B) TREBLE THE AMOUNT SOUGHT BY THE MERCANTILE ESTABLISHMENT IN ANY
15 SUCH SETTLEMENT AGREEMENT. IN THE CASE OF MULTIPLE SETTLEMENT OFFERS,
16 THE AMOUNT TO BE TREBLED SHALL BE THE HIGHEST SETTLEMENT AMOUNT SOUGHT
17 BY SUCH MERCANTILE ESTABLISHMENT;

18 (C) IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING
19 LIABILITY, THE COSTS OF THE ACTION, TOGETHER WITH A REASONABLE ATTOR-
20 NEYS' FEE AS DETERMINED BY THE COURT.

21 S 2. This act shall take effect immediately and shall apply to any
22 prospective attempted settlements of such civil actions.