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

5893--B

2015-2016 Regular Sessions

I N  S E N A T E

June 10, 2015

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to publicly accessible collection bins

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

Section 1. Section 399-bbb of the general business law, as added by chapter 264 of the laws of 2010, is amended to read as follows:

S 399-bbb. Solicitations by container; disclosures. 1. As used in this section the term "PUBLICLY ACCESSIBLE collection [container] BIN" shall mean an unattended canister, box, receptacle, or similar device, used for the solicitation and collection of personal property, not including money or evidences of debt. Such term shall not include an unattended canister, box, receptacle, or similar device, used exclusively for the collection of used paper, cardboard, motor oil, bottles, cans or other receptacles or materials, not including textiles, for recycling or waste diversion purposes.

2. A PUBLICLY ACCESSIBLE COLLECTION BIN SHALL NOT BE PLACED ON PUBLIC PROPERTY; IF PLACED ON PUBLIC PROPERTY, THE LOCAL MUNICIPALITY MAY IMMEDIATELY REMOVE AND DISPOSE OF SUCH BIN.

3. Any person, business, not-for-profit organization or other entity or entities, or an agent or agents, whether paid or not paid, of such person, business, not-for-profit organization or other entity, who places a PUBLICLY ACCESSIBLE collection [container] BIN in a public place on [public or] private property shall affix to the PUBLICLY ACCESSIBLE collection [container] BIN a label that is designed to be incapable of being destroyed or removed and that clearly and conspicuously displays in at least twenty-four point type unless otherwise specified in this

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

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section and on the front of the PUBLICLY ACCESSIBLE collection [container] BIN in a manner that is readily visible to an individual placing property in the PUBLICLY ACCESSIBLE collection [container] BIN the following:

(a) the name of the person, business, not-for-profit organization or other entity which owns the PUBLICLY ACCESSIBLE collection [container] BIN and any agent thereof; the legal address [and], telephone number, E-MAIL ADDRESS AND WEBSITE, IF APPLICABLE, of such person, business, not-for-profit organization or other entity and any agent thereof where the owner of the PUBLICLY ACCESSIBLE collection [container] BIN or its agent can be reached during ordinary business hours; any [registrations] PERMIT OR LICENSE required by [state or] local law of such person, business, not-for-profit organization or other entity and any agent thereof; A STATEMENT THAT NOTHING SHALL BE LEFT OUTSIDE OF SUCH BIN; and a statement that shall take the following form: For more information, contact the department of law at (insert the current telephone number established by the department of law for receiving inquiries from consumers) or (insert the current address of the website of the department of law). If more than one person, business, not-for-profit organization or other entity own the PUBLICLY ACCESSIBLE collection [container] BIN, all of the owners' names, legal addresses, telephone numbers and any [registrations] PERMITS OR LICENSES required by [state or] local law of such owners shall be included in the disclosure label. If more than one agent represents an owner of the PUBLICLY ACCESSIBLE collection [container] BIN, INCLUDING A FOR-PROFIT ENTITY, ON BEHALF OF, OR IN CONJUNCTION WITH A NOT-FOR-PROFIT ORGANIZATION, all of the agents' names, legal addresses, telephone numbers and any [registrations] PERMITS OR LICENSES required by [state or] local law of such owners shall be included in the disclosure label; and

(b) a statement about the purpose or purposes for the property collected in the [container] BIN using letters no less than two inches in height as follows:

(i) if all of the property placed in the PUBLICLY ACCESSIBLE collection [container] BIN is directed to a non-business purpose or purposes as described in paragraph (b) of section two hundred one of the not-for-profit corporation law or, if the property is sold and all proceeds of such sale are directed to a non-business purpose or purposes described in paragraph (b) of section two hundred one of the not-for-profit corporation law, the label affixed to the PUBLICLY ACCESSIBLE collection [container] BIN pursuant to this section shall state:

DONATED ITEMS WILL BE USED FOR CHARITABLE PURPOSES

The value of items placed in this [container] BIN is tax-deductible.

or

(ii) if [all] ANY of the property placed in the PUBLICLY ACCESSIBLE collection [container] BIN is not directed to a non-business purpose or purposes as described in paragraph (b) of section two hundred one of the not-for-profit corporation law, or if the property is sold, and [all] ANY proceeds of such sale are not directed to a non-business purpose or purposes described in paragraph (b) of section two hundred one of the not-for-profit corporation law, the label affixed to the PUBLICLY ACCESSIBLE collection [container] BIN pursuant to this section shall state:

DONATED ITEMS WILL BE USED FOR PROFIT

The value of items placed in this [container] BIN is NOT tax-deductible.

(C) FOR COLLECTION BINS OWNED BY A NOT-FOR-PROFIT ORGANIZATION, A STATEMENT DESCRIBING THE CHARITABLE CAUSES THAT WILL BENEFIT FROM DONATIONS; AND

(D) COLLECTION BINS OPERATED BY CORPORATE FUNDRAISERS OR ANY ENTITY PLACING AND OPERATING COLLECTION BINS FOR THE BENEFIT OF ANOTHER FOR-PROFIT ENTITY OR NOT-FOR-PROFIT ENTITY SHALL ABIDE BY THE REQUIREMENTS OF THE ABOVE AND ANY ADDITIONAL GUIDELINES AND LABELING REQUIREMENTS UNDER STATE OR LOCAL LAW AS APPLICABLE.

[3] 4. The owner of a PUBLICLY ACCESSIBLE collection [container] BIN shall obtain written consent from the owner or lessee of the property where the PUBLICLY ACCESSIBLE collection [container] BIN is located, or the owner or lessee's authorized agent, stating that the owner of the PUBLICLY ACCESSIBLE collection [container] BIN has received permission to place the [box] BIN on the property. Upon request of any local jurisdiction, documentation evidencing the written consent shall be made available by the owner of the PUBLICLY ACCESSIBLE collection [container] BIN. THE OWNER OR LESSEE OF THE PROPERTY WHERE THE PUBLICLY ACCESSIBLE COLLECTION BIN IS LOCATED, OR THE OWNER OR LESSEE'S AUTHORIZED AGENT MAY RESCIND SUCH CONSENT AT ANY TIME, PROVIDED, WRITTEN NOTICE OF SUCH RESCISSION IS PROVIDED TO THE BIN OWNER AT LEAST TEN DAYS PRIOR TO THE BIN'S REMOVAL. WRITTEN NOTICE OF RESCISSION OF CONSENT, IF GIVEN BY FIRST-CLASS MAIL, SHALL BE DEEMED GIVEN WHEN DEPOSITED IN A MAILBOX PROPERLY ADDRESSED AND ADEQUATE POSTAGE PREPAID. SUCH WRITTEN NOTICE SHALL BE EFFECTIVE IRRESPECTIVE OF THE FORM OF SUCH WRITTEN NOTICE IF IT INDICATES THE INTENTION OF THE OWNER OR LESSEE OF THE PROPERTY TO RESCIND THE CONSENT PREVIOUSLY GIVEN BY THE PROPERTY OWNER OR LESSEE'S AUTHORIZED AGENT. TEN DAYS AFTER GIVING NOTICE, THE PROPERTY OWNER OR LESSEE MAY REMOVE AND DISPOSE OF SUCH BIN, AND ANY REASONABLE COSTS ASSOCIATED WITH SUCH REMOVAL OR DISPOSAL SHALL BE RECOVERABLE FROM THE OWNER OF THE PUBLICLY ACCESSIBLE COLLECTION BIN.

[4] 5. THE OWNER OF A PUBLICLY ACCESSIBLE COLLECTION BIN SHALL ADHERE TO THE FOLLOWING MAINTENANCE REQUIREMENTS:

(A) BINS SHALL BE SERVICED AND EMPTIED AS NEEDED OR WITHIN SEVEN DAYS OF A REQUEST BY THE PROPERTY OWNER OR OWNER'S AGENT, INCLUDING REQUESTS FOR REMOVAL OF DEBRIS AND BULK ITEMS;

(B) REMOVE GRAFFITI ON THE OUTSIDE OF BINS WITHIN SEVEN DAYS OF REQUESTS OR OTHERWISE BECOMING AWARE OF SUCH DAMAGE OR VANDALISM;

(C) REPAIR DAMAGED BINS WITHIN SEVEN DAYS OF REQUESTS OR OTHERWISE BECOMING AWARE OF SUCH DAMAGE OR VANDALISM;

(D) SECURE EACH COLLECTION BIN WITH A TAMPER-RESISTANT LOCK; AND

(E) MAINTAIN THE AESTHETIC PRESENTATION OF SUCH BIN, INCLUDING FRESH PAINT AND READABLE SIGNAGE.

6. WHENEVER A BIN IS REMOVED BY A PROPERTY OWNER IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, THE PROPERTY OWNER SHALL INFORM THE BIN OWNER OF THE LOCATION TO WHICH THE BIN WAS REMOVED, OR ANY OTHER DISPOSITION OF THE BIN, AND ANY REASONABLE COSTS ASSOCIATED WITH SUCH REMOVAL OR DISPOSAL SHALL BE RECOVERABLE FROM THE OWNER OF THE PUBLICLY ACCESSIBLE COLLECTION BIN.

7. (a) Any violation of the provisions of this section shall be deemed a deceptive practice within the meaning of section three hundred forty-nine of this chapter and any remedy provided therein shall be available for the enforcement of this section. In addition, the district attorney, county attorney, and the corporation counsel shall have concurrent authority to seek the relief in paragraph [b] (B) of this subdivision, and all civil penalties obtained in any such action shall be retained by the municipality or county IN WHICH SUCH BIN IS PLACED.

(b) In every case where the court shall determine that a violation of this section has occurred, it may impose a civil penalty of not more than five thousand dollars for each violation.

(I) ANY BIN NOT IN COMPLIANCE WITH THE PROVISIONS RELATED TO THE DISPLAY OF INFORMATION OR UNPERMITTED PLACEMENT SHALL SUBJECT THE OWNER OF SUCH BIN TO A CIVIL PENALTY OF UP TO TWO HUNDRED FIFTY DOLLARS FOR THE FIRST OFFENSE, AND A CIVIL PENALTY OF UP TO FIVE HUNDRED DOLLARS FOR EACH SUBSEQUENT OFFENSE WITHIN AN EIGHTEEN MONTH PERIOD.

(II) ANY BIN NOT IN COMPLIANCE WITH THE MAINTENANCE PROVISIONS SHALL SUBJECT THE OWNER OF SUCH BIN TO A CIVIL PENALTY OF UP TO FIFTY DOLLARS FOR THE FIRST OFFENSE, AND A CIVIL PENALTY OF UP TO ONE HUNDRED DOLLARS FOR EACH SUBSEQUENT OFFENSE WITHIN AN EIGHTEEN MONTH PERIOD.

(c) It shall be a defense to the imposition of any civil penalty or any other remedy in an action brought to enforce the provisions of this section if the person or entity affixed a label as required by this section and such label was removed or defaced by vandals, provided that such person or entity subsequently complies with the requirements of this section.

(d) Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all publicly accessible collection bins in place on the effective date of this act and all publicly accessible collection bins placed subsequent to the effective date of this act.