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 deriving from larceny prosecutions

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

Section 1. The general business law is amended by adding a new section 349-f to read as follows:

S 349-F. CIVIL PROCEEDINGS DERIVATIVE OF ALLEGED LARCENY. 1. WHENEVER A MERCANTILE ESTABLISHMENT ATTEMPTS TO SETTLE A CIVIL ACTION PURSUANT TO SECTION 11-105 OF THE GENERAL OBLIGATIONS LAW, ALL COMMUNICATIONS PERTAINING TO SUCH ATTEMPTED SETTLEMENT SHALL CONTAIN THE FOLLOWING STATEMENT, WHICH SHALL, IF WRITTEN, BE IN A CONSPICUOUS PLACE, IN FONT LARGER THAN THE REMAINDER OF THE COMMUNICATION, AND, IF SPOKEN, READ IN ITS ENTIRETY:

THIS IS AN ATTEMPT TO REACH A CIVIL SETTLEMENT AGREEMENT RESULTING FROM A LARCENY THAT ALLEGEDLY INVOLVES YOU. SHOULD YOU CHOOSE TO AGREE TO THIS SETTLEMENT, YOU WILL BE SUBJECT TO THE TERMS AND CONDITIONS OF SUCH AGREEMENT, WHICH ARE GOVERNED BY S11-105 OF NEW YORK STATE'S GENERAL OBLIGATIONS LAW.

SHOULD YOU REFUSE THIS AGREEMENT, YOU ARE STILL SUBJECT TO S11-105 OF NEW YORK STATE'S GENERAL OBLIGATIONS LAW, WHICH INDICATES THAT PERSONS WHO COMMIT LARCENY AGAINST THE PROPERTY OF A MERCANTILE ESTABLISHMENT ARE CIVILLY LIABLE TO SUCH MERCANTILE ESTABLISHMENT IN THE AMOUNT OF THE RETAIL PRICE OF THE MERCHANDISE (ONLY IF SUCH MERCHANDISE IS NOT RECOVERED IN SALEABLE CONDITION), UP TO $1,500, AND A PENALTY IN THE AMOUNT 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.

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

SHOULD YOU ACCEPT OR REFUSE A CIVIL SETTLEMENT AGREEMENT, A MERCANTILE ESTABLISHMENT MAY STILL BRING CRIMINAL CHARGES AGAINST YOU IN A COURT OF LAW, UNLESS SUCH CIVIL SETTLEMENT AGREEMENT BETWEEN YOU AND THE MERCANTILE ESTABLISHMENT PRECLUDES THE MERCANTILE ESTABLISHMENT FROM PURSUING CRIMINAL CHARGES.

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

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

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

(C) IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING LIABILITY, THE COSTS OF THE ACTION, TOGETHER WITH A REASONABLE ATTORNEYS' FEE AS DETERMINED BY THE COURT.

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