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

4530

2015-2016 Regular Sessions

I N A S S E M B L Y

February 3, 2015

Introduced by M. of A. DINOWITZ, GLICK, JAFFEE, HIKIND, SEAWRIGHT, BROOK-KRASNY -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to unilateral pricing policies or agreements for contact lenses

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. UNILATERAL PRICING POLICY OR AGREEMENTS FOR CONTACT LENSES UNLAWFUL. 1. IT SHALL BE UNLAWFUL FOR A MANUFACTURER OR DISTRIBUTOR OF PRESCRIPTION CONTACT LENSES TO PREVENT, BY ANY MEANS, INCLUDING THROUGH A UNILATERAL PRICING POLICY OR AGREEMENT, ANY RETAILER FROM SELLING OR ADVERTISING SUCH CONTACT LENSES TO CONSUMERS BELOW ANY SPECIFIED PRICE, OR TO OTHERWISE LIMIT THE ABILITY OF ANY RETAILER TO DETERMINE PRICES AT WHICH CONTACT LENSES ARE OFFERED OR ADVERTISED TO CONSUMERS, OR TO RESTRICT OPTIONS AVAILABLE TO CONTACT LENS CONSUMERS BY DISCRIMINATING IN THE DISTRIBUTION OF CONTACT LENSES BASED ON THE CHANNEL OF TRADE OR BASED ON WHETHER THE RETAILER IS, OR IS ASSOCIATED WITH A PERSON OR ENTITY, AUTHORIZED BY LAW TO PRESCRIBE SUCH CONTACT LENSES.

2. WHENEVER IT SHALL APPEAR THAT THERE HAS BEEN A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE

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

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ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR SUCH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

S 2. This act shall take effect immediately.