STATE OF NEW YORK

8099

IN SENATE

January 25, 2022

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to authorizing the attorney general to bring an action for violation of the prohibitions concerning unlawful selling practices and specifying damages awardable

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 3 of section 396 of the general business law, as amended by chapter 99 of the laws of 1966, is amended to read as follows:

3. **a.** Whenever there shall be 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 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 is, in fact, violating this section, an injunction may be issued by such court or justice, enjoining and restraining such action or violation, without requiring proof that any person has, in fact, been misled or deceived or otherwise damaged thereby.

b. In addition to the authority granted to the attorney general pursuant to paragraph a of this subdivision and the authority granted to a recipient pursuant to paragraph a of subdivision two of this section, the attorney general, or any person adversely affected by reason of a violation of the provisions of subdivision two of this section, may bring an action against a person who violates the provisions of subdivision two of this section to recover the greater of:

(1) actual damages; or

(2) up to five hundred dollars for each instance in which goods, wares or merchandise were sent in violation of the provisions of subdivision two of this section.

c. In an action under paragraph b of this subdivision the court may award the costs of the action together with reasonable attorney's fees to a prevailing plaintiff.

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

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d. Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section.

§ 2. This act shall take effect immediately and shall apply to all selling practices pertaining to unordered goods.