

STATE OF NEW YORK

6731

2021-2022 Regular Sessions

IN SENATE

May 13, 2021

Introduced by Sen. GOUNARDES -- 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 false representation of affiliation or approval of state or local agencies

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

1 Section 1. Section 350-a of the general business law, as amended by
2 chapter 615 of the laws of 1988, subdivision 3 as added by chapter 107
3 of the laws of 1994, is amended to read as follows:

4 § 350-a. False advertising. 1. The term "false advertising" means
5 advertising, including labeling, of a commodity, or of the kind, charac-
6 ter, terms or conditions of any employment opportunity if such advertis-
7 ing is misleading in a material respect. In determining whether any
8 advertising is misleading, there shall be taken into account (among
9 other things) not only representations made by statement, word, design,
10 device, sound or any combination thereof, but also the extent to which
11 the advertising fails to reveal facts material in the light of such
12 representations with respect to the commodity or employment to which the
13 advertising relates under the conditions prescribed in said advertise-
14 ment, or under such conditions as are customary or usual. For purposes
15 of this article, with respect to the advertising of an employment oppor-
16 tunity, it shall be deemed "misleading in a material respect" to either
17 fail to reveal whether the employment available or being offered
18 requires or is conditioned upon the purchasing or leasing of supplies,
19 material, equipment or other property or whether such employment is on a
20 commission rather than a fixed salary basis and, if so, whether the
21 salaries advertised are only obtainable if sufficient commissions are
22 earned.

23 2. Any written or electronic communication which simulates a document
24 authorized, issued or approved by any court, official, agency of this
25 state or a political subdivision thereof, or of another state or offi-

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

LBD11071-01-1

cial governmental entity, foreign or domestic, or which creates a false impression as to such document's source, authorization or approval, shall be considered false advertising. This subdivision shall be construed to prohibit any false representation or implication that a person, firm, corporation or association, or agent or employee thereof, selling a commodity or service is vouched for, approved of, bonded by, or otherwise affiliated with this state or a political subdivision thereof, or of another state or official governmental entity, foreign or domestic.

3. An employer shall not be liable under this section as a result of a failure to disclose all material facts relating to terms and conditions of employment if the aggrieved person has not suffered actual pecuniary damage as a result of the misleading advertising of an employment opportunity or if the employer has, prior to the aggrieved person suffering any pecuniary damage, disclosed in writing to that person a full and accurate description of the kind, character, terms and conditions of the employment opportunity.

~~[3.]~~ 4. It shall constitute false advertising to display or announce, in print or broadcast advertising, the price of an item after deduction of a rebate unless the actual selling price is displayed or announced, and clear and conspicuous notice is given in the advertisement that a mail-in rebate is required to achieve the lower net price.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.