STATE OF NEW YORK

3568

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. FALL -- read once and referred to the Committee on Consumer Affairs and 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:

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

§ 350-a. False advertising. 1. The term "false advertising" means advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. For purposes of this article, with respect to the advertising of an employment opportunity, it shall be deemed "misleading in a material respect" to either fail to reveal whether the employment available or being offered requires or is conditioned upon the purchasing or leasing of supplies, material, equipment or other property or whether such employment is on a commission rather than a fixed salary basis and, if so, whether the salaries advertised are only obtainable if sufficient commissions are earned.

2. **Any written or electronic communication which simulates a document authorized, issued or approved by any court, official, agency of this 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.

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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 unless the person, firm, corporation or association, or agent or employee thereof, has received express permission from such court, official, or agency for the use of such document. This subdivision shall be construed to prohibit any false representation or implication, written or verbal, that a person, firm, corporation or association, or agent or employee thereof, selling a commodity or service is vouched for, approved of, bonded by, operating with or on behalf of, or otherwise affiliated with this state or a political subdivision thereof, or of another state or official governmental entity, foreign or domestic, unless such person, firm, corporation or association, or agent or employee thereof, has received express permission from such state or political subdivision for such affiliation.

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.