

STATE OF NEW YORK

276

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

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

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

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1 state or a political subdivision thereof, or of another state or offi-
2 cial governmental entity, foreign or domestic, or which creates a false
3 impression as to such document's source, authorization or approval,
4 shall be considered false advertising unless the person, firm, corpo-
5 ration or association, or agent or employee thereof, has received
6 express permission from such court, official, or agency for the use of
7 such document. This subdivision shall be construed to prohibit any false
8 representation or implication, written or verbal, that a person, firm,
9 corporation or association, or agent or employee thereof, selling a
10 commodity or service is vouched for, approved of, bonded by, operating
11 with or on behalf of, or otherwise affiliated with this state or a poli-
12 tical subdivision thereof, or of another state or official governmental
13 entity, foreign or domestic, unless such person, firm, corporation or
14 association, or agent or employee thereof, has received express permis-
15 sion from such state or political subdivision for such affiliation.

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

24 [~~3-~~] 4. It shall constitute false advertising to display or announce,
25 in print or broadcast advertising, the price of an item after deduction
26 of a rebate unless the actual selling price is displayed or announced,
27 and clear and conspicuous notice is given in the advertisement that a
28 mail-in rebate is required to achieve the lower net price.

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